

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * *		CRIMINAL ACTION
UNITED STATES OF AMERICA	*	11-186-S
	*	
VS.	*	MAY 13, 2013
	*	<u>VOLUME II</u>
JOSEPH CARAMADRE	*	
	*	PROVIDENCE, RI
* * * * *	*	

HEARD BEFORE THE HONORABLE WILLIAM E. SMITH
DISTRICT JUDGE
(Motion to Withdraw Guilty Plea)

APPEARANCES:

FOR THE GOVERNMENT:	JOHN P. McADAMS, AUSA and STEPHEN DAMBRUCH, AUSA U.S. Attorney's Office 50 Kennedy Plaza Providence, RI 02903
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FOR THE DEFENDANT Joseph Caramadre:	RANDY OLEN, ESQ. Olen Law Office 55 Bradford Street Suite 203 Providence, RI 02903
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Court Reporter:	Anne M. Clayton, RPR One Exchange Terrace Providence, RI 02903
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1 13 MAY 2013 -- 9:30 A.M.

2 THE COURT: All right. Good morning. This is
3 the matter of the United States versus Joseph
4 Caramadre. We're here for continuation of the motion
5 for the Defendant to withdraw his plea.

6 Let's begin by having counsel identify
7 themselves for the record, please.

8 MR. McADAMS: Good morning, your Honor. John
9 McAdams and Lee Vilker on behalf of the United States.

10 MR. OLEN: Good morning, your Honor. Randy Olen
11 for Mr. Caramadre.

12 MR. WATT: Robert Watt, co-counsel.

13 THE COURT: Thank you. I believe when we left
14 off Mr. Caramadre was still on the stand; is that
15 correct?

16 MR. WATT: Yes.

17 MR. OLEN: Yes, sir.

18 THE COURT: Mr. Caramadre, would you please
19 return to the stand.

20 **JOSEPH CARAMADRE**, Resumes stand.

21 THE COURT: Good morning, Mr. Caramadre. Have a
22 seat. You recall that you were sworn in at the last
23 hearing. You're still under oath.

24 THE WITNESS: Yes, your Honor.

25 THE COURT: Okay. Mr. McAdams?

1 MR. McADAMS: Your Honor, the Government has no
2 additional cross-examination. Thank you.

3 THE COURT: Mr. Watt, redirect.

4 **REDIRECT EXAMINATION BY MR. WATT**

5 Q. Mr. Caramadre, on questioning by Mr. McAdams at
6 our previous hearing, the issue of Raymour
7 Radhakrishnan and the term "holder in trustee" came up.
8 Could you explain to the Court in as simple language as
9 you can what that holder in trustee concept is?

10 A. Yes. A holder in trustee is when one party gives
11 money to another party for the purpose of the second
12 party investing it on behalf of the first party. In
13 order to perfect or make it absolutely legal, they must
14 use checks that go through the Federal Reserve banking
15 system, and all tax reporting must be done in the year
16 of the transactions to return to the first party.

17 So a holder in trustee is someone who is just
18 being given money to invest on behalf of someone else.

19 Q. Did you follow that outline you just gave to the
20 Court as it relates to Mr. Radhakrishnan?

21 A. Yes. Every cent that Mr. Radhakrishnan received
22 was given to me, both in cash -- excuse me, in a check
23 and the proper 1099 and 1099-Rs were issued by
24 Mr. Radhakrishnan to me so that the Federal Government,
25 especially Internal Revenue Service, would know exactly

1 whose income it is and whose assets they were.

2 **Q.** Moving on if I can, Mr. McAdams asked you a
3 question in terms of concealment, whether putting in a
4 small amount to begin and then a large amount to follow
5 the acquisition of the annuity, whether that was a
6 concealment in a deceptive way to commit a crime. Do
7 you remember that question?

8 **A.** Yes, I remember the question.

9 **Q.** Can you tell the Court whether there is any reason
10 that existed in your practice to put in a small amount
11 and then follow with a large amount?

12 **A.** Yes. The reason is that the only way you can know
13 what a variable annuity contract is, before you buy it,
14 is by reading a rather lengthy prospectus, many times
15 small print as much as 200 pages. That embodies all
16 the rules of the variable annuity. The laws provide
17 that upon receiving the actual contract, which may be
18 only 35 pages, that you have the right of a 10- or
19 20-day free look period to make sure that that
20 contract, which you thought you were buying with the
21 rules of the prospectus, are embodied in the contract
22 itself.

23 Many times the contract language is different
24 from the prospectus and that's why Consumer Protection
25 laws allowed for this 10- or 20-day free-look period.

1 The reason we put in a small amount is in the
2 event the contract does not comport to what we felt we
3 were buying, we get to free-look it. In other words,
4 we get to exercise the 10- or 20-day free-look period.
5 I did not want my clients having a million dollars tied
6 up if the contract does not comport because it will
7 take a long time to get the money back from a company,
8 and they could be investing it in other opportunities.

9 Q. And if the look during the free-look period,
10 so-called, results in you not wanting to continue with
11 the annuity as issued, what happens at that point?

12 A. At that point, we inform the company that we are
13 exercising the free-look, and they will issue a refund
14 of the deposit made.

15 Q. Did that ever occur in the course of your
16 business?

17 A. Yes. It happened various times, yes.

18 Q. Do you recall any specific instance?

19 A. I could recall one that Mr. Maggiacomo himself
20 wrote a letter to the broker/dealer explaining that we
21 are exercising the free-look because the contract does
22 not comport with the prospectus and that was a case on
23 point. Also, there had been maybe as many as 10 or 12,
24 possibly more, contracts in which a small deposit was
25 put in and no larger deposit was ever added to it. And

1 that was because the contract states you can put up to
2 a million or 5 million in these policies. It's a
3 unilateral contract. The consumer has all the say as
4 to how much money they could put in any time in the
5 future with certain limitations of time and of amount
6 that the company stipulated in the contract.

7 **Q.** In the example that you just gave the Court as it
8 relates to Mr. Maggiacomo, did that particular instance
9 come up in conversations between you and Mr. Lepizzera?

10 **A.** Yes, it did. Mr. Lepizzera wrote me an e-mail
11 telling me this is fantastic. The e-mail that he
12 found, that goes a long way of proving why we staggered
13 the deposits. And he was very happy to see that Ed
14 Maggiacomo wrote an e-mail to the broker/dealer telling
15 them they were going to free-look the contract.

16 **Q.** In your experience over the years, does the
17 placement of a large sum of money after an initial
18 small payment of money, does that require any
19 particular action by the insurance issuer or the
20 annuity issuer?

21 **A.** The annuity issuer establishes underwriting
22 guidelines that say they will accept X amount of
23 aggregate deposits per contract. Now, anything over 10
24 or 20,000 is considered an actual trade. The minimum
25 they take is as little as 5,000, in some instances

1 1,000. But when you start a contract with 50,000 and
2 add 950 more, it does get the attention of the issuer.
3 And it gets the attention in this fashion: The brokers
4 will get a call and say, Oh, thanks so much for that
5 big drop of money that we didn't expect. We only
6 expected 50,000; you put in 950,000 more. Thanks so
7 much. Can we give you a vacation somewhere?

8 So it makes a much bigger difference when we put
9 it on the back end. But at the end of the day, it
10 makes no difference legally or via contract.

11 **Q.** The term "insurable interest" came up in
12 cross-examination. What is the difference between
13 insurance and annuities as it relates to the concept of
14 insurable interest?

15 **A.** The concept of insurable interest in which this
16 Honorable Court has ruled on, is that insurable
17 interest is required on life insurance and not on
18 variable annuities. And the difference being on life
19 insurance an individual cannot buy \$1,000 a year
20 premium and have a million dollar term life on someone
21 else because the windfall would be substantial. It
22 would be geometric. As opposed to an annuity, our
23 Legislature has clearly stated that an annuity requires
24 no insurable interest because at the end of the day the
25 investor is actually putting up the whole million.

1 They're getting very little more, the fact that they're
2 using a measuring life, and it's their million dollars.
3 It's not what has been characterized wrongly by many
4 people that there's a big windfall.

5 Q. You were asked whether or not on the annuities you
6 needed to do something called a suitability review,
7 quote, unquote. What is a suitability review?

8 A. A suitability review is an examination from the
9 broker/dealer to determine if the investment is in the
10 best interest of the investor. It is a process to
11 protect the investor from themselves. If this elderly
12 client came to my office and had \$1 million to her name
13 and it was her only million, it would not be suitable
14 that she put it all in one investment because if the
15 investment goes bankrupt, she will be out of money. So
16 suitability is there to protect the investor.

17 Q. Who does the suitability review?

18 A. The broker/dealer's responsibility is to make sure
19 that when an annuity is sold that the investor is not
20 at risk, does not have additional risk of being
21 under-diversified.

22 Q. Where does the requirement for the conducting of a
23 suitability review come from, if you know?

24 A. Come from two sources. One by contract. The
25 insurer tells the broker/dealer you will be responsible

1 for suitability; and also lately, the SEC, the
2 Securities and Exchange Commission and/or FINRA has
3 adopted that broker/dealers have a duty to know their
4 customer and protect their customers.

5 I should note in all our transactions there's
6 never been any complaint whatsoever by any owner
7 regarding suitability or choice of investment.

8 Q. Okay. You were asked as to the issue dealing with
9 Mrs. Egan and Mr. Radhakrishnan.

10 A. Yes.

11 Q. Do you recall that testimony?

12 A. Yes.

13 Q. That cross-examination wherein Mr. Radhakrishnan
14 indicated on some form that he was a family friend of
15 Mrs. Egan?

16 A. Yes.

17 Q. You asked Mr. McAdams whether he would like an
18 explanation as to why Mr. Radhakrishnan put that?

19 A. Yes, I did.

20 Q. Can you give the explanation?

21 A. Yes. Mrs. Egan came with her husband and their
22 attorney to our office to a meeting with myself and
23 Mr. Radhakrishnan. Mr. Radhakrishnan had spent time
24 with her husband beforehand in a meeting with me and
25 the fact that Mrs. Egan came to the office, agreed to

1 let us set up a bond account and an annuity and
2 accepted my suggestion, as we were talking about
3 praying for her illness, that I will recommend to
4 Raymour that he would just put that he is now her
5 friend. She's been to the office, we knew her husband,
6 she's come in through an attorney, and we just happened
7 to know mutual people. She had no problem whatsoever.
8 It's also completely irrelevant whether she's a friend
9 or there was no relationship.

10 Q. Why is it completely irrelevant?

11 A. Because none is required. This Court has made it
12 very clear in its ruling on civil matters that no
13 insurable interest is required, period.

14 Q. You were asked about Walter Craddock and Bertha
15 Howard. Do you recall those questions on
16 cross-examination?

17 A. Yes.

18 Q. You indicated that there was a specific purpose;
19 is that correct?

20 A. Yes.

21 Q. What was that specific purpose?

22 A. I opened up three or four different bond accounts
23 in Walter Craddock's name because he was our in-house
24 counsel; and in the event I died, all investments in my
25 name would effectively go to the co-tenant or the

1 measuring life because it's the survivor gets all the
2 money.

3 So in order to spread my risk a little bit, we
4 diverted about three accounts or four in Walter
5 Craddock's name just as a hedge against me dying and
6 losing 25 accounts.

7 We also wanted Walter, who is our in-house
8 attorney, to get involved in the process and make sure
9 that everyone is doing everything correctly.

10 Q. Your personal belief today under oath of this
11 Court is that you are guilty or not guilty of the
12 charges in the indictment?

13 A. I'm one hundred percent innocent of all the
14 charges, and I feel I'm entitled to my day in court.

15 MR. WATT: Thank you, Mr. Caramadre.

16 I have nothing further, please, Judge.

17 THE COURT: Thank you, Mr. Watt.

18 Recross, Mr. McAdams?

19 **RECROSS-EXAMINATION BY MR. McADAMS**

20 Q. Mr. Caramadre, is your testimony that the reason
21 that you put bond accounts in the name of Walter
22 Craddock was in the event that you died, you wanted to
23 make sure that the money did not flow to the terminally
24 ill person but rather went to Mr. Craddock so that he
25 could spread it to your heirs; is that right?

1 A. So that he could protect the assets. Whether it
2 be my assets or Walter's assets because on some of the
3 accounts he actually added in money.

4 Q. But you wanted to make sure it didn't go to the
5 terminally ill person if they outlived you?

6 A. I wanted a hedge, yes.

7 MR. McADAMS: No further questions.

8 MR. WATT: No follow-up, please.

9 THE COURT: Thank you.

10 All right. Mr. Caramadre, you may step down.
11 Thank you very much.

12 THE WITNESS: You're welcome.

13 THE COURT: Mr. Watt, do you have any further
14 witnesses?

15 MR. WATT: I do not, Judge, please.

16 THE COURT: All right. Then we'll turn to the
17 Government.

18 MR. McADAMS: Your Honor, the Government calls
19 Michael Lepizzera.

20 MICHAEL LEPIZZERA, first having been duly sworn,
21 testified as follows:

22 THE CLERK: Please state your name and spell
23 your last name for the record.

24 THE WITNESS: Michael J. Lepizzera, Jr. Last
25 name is L-E-P-I-Z-Z-E-R-A.

1 THE COURT: Good morning, Mr. Lepizzera.

2 THE WITNESS: Good morning.

3 THE COURT: You may inquire, Mr. McAdams.

4 MR. McADAMS: Thank you, your Honor.

5 **DIRECT EXAMINATION BY MR. McADAMS**

6 Q. Good morning, Mr. Lepizzera.

7 A. Good morning.

8 Q. Mr. Lepizzera, you're an attorney?

9 A. Yes, I am.

10 Q. How long have you been an attorney?

11 A. I believe I was sworn in to the Rhode Island Bar
12 in November of 1993.

13 Q. And are you licensed in any other jurisdictions?

14 A. Just Rhode Island.

15 Q. Are you a member of the Federal Bar?

16 A. I am.

17 Q. Are there any other legal associations that you
18 are a member of?

19 A. I believe I am admitted to the First Circuit.

20 Q. And what type of law practice do you have?

21 A. I own a law firm. I have a partner. We employ
22 approximately 20 people. Our practice runs the gamut
23 from litigation practice to a real estate practice. I
24 primarily focus my law practice in litigation, both
25 civil and criminal litigation.

1 Q. So you have practiced as a criminal defense
2 attorney?

3 A. Yes, I do.

4 Q. Approximately how long have you handled criminal
5 cases?

6 A. Since right after being sworn in to the Bar.

7 Q. So nearly 20 years?

8 A. Nearly 20 years.

9 Q. Now, at some point, you became the attorney of
10 record for Mr. Caramadre; is that correct?

11 A. I did.

12 Q. Can you explain how that came about?

13 A. I believe the indictment was returned on November
14 17th, 2011, and the arraignment might have been later
15 on that month. And I initially entered a special
16 appearance on behalf of Mr. Caramadre.

17 Q. What do you mean by that?

18 A. Meaning that I had initially recommended to
19 Mr. Caramadre that he hire a sizable law firm to
20 represent him in this case because as I viewed this
21 indictment, it was a 66-count indictment involving a
22 couple years of investigation, Grand Jury
23 investigation, hundreds of thousands of pages of
24 documents, and I thought it was in his best interest to
25 hire a sizable law firm to represent him in this

1 matter.

2 So initially, I entered my appearance, what they
3 call a special appearance. Magistrate Martin, I
4 believe, handled the original arraignment, and he
5 allowed me to enter a special appearance for
6 Mr. Caramadre to handle the arraignment because I
7 didn't want Mr. Caramadre to be unrepresented at the
8 arraignment stage.

9 Q. Let me just take a step back on that a little bit.
10 You referenced the indictment date November of 2011?

11 A. Yes.

12 Q. Had you been representing Mr. Caramadre in
13 connection with the investigation prior to the
14 indictment?

15 A. Yes. I believe I formally began representing him
16 with respect to the Grand Jury investigation. It may
17 have been August of 2010 and -- which is jogging my
18 memory right now. There was an issue regarding a hard
19 drive for Estate Planning Resources, and at that point
20 I became formally engaged and took over from
21 Mr. Flanders who was representing Mr. Caramadre before
22 that point in time.

23 Q. So Mr. Caramadre had been represented by Attorney
24 Robert Flanders; and approximately August of 2010, you
25 came on and represented Mr. Caramadre in connection

1 with the Grand Jury investigation?

2 A. Yes.

3 Q. And through the course of that representation, did
4 you become familiar with the nature of the allegations
5 against Mr. Caramadre?

6 A. Yes.

7 Q. Okay. And did you, in fact, engage in discussions
8 with the Government, even pre-indictment, with respect
9 to your representation of Mr. Caramadre?

10 A. Many discussions.

11 Q. Okay. Was it fair to say that the nature of the
12 investigation was complex?

13 A. Beyond complex. It was a very -- it is a very
14 complex case.

15 Q. There were numerous witnesses; is that right?

16 A. Numerous witnesses, and I believe hundreds of
17 thousands of pages of documents.

18 Q. Okay. And you were working on a daily basis with
19 Mr. Caramadre even before the indictment was returned;
20 is that correct?

21 A. Well, when you say "daily" --

22 Q. Let me rephrase it. How frequently were you
23 working with Mr. Caramadre before the indictment was
24 returned?

25 A. This case, I can't tell you right now whether it's

1 three days a week or five days a week, but this case
2 began to consume my practice because it was a whopper
3 of a case, for lack of a better word, which is why when
4 the indictment was returned, even though Mr. Caramadre
5 insisted that he wanted me as his lawyer, I insisted
6 back that it was in his best interest because that's
7 what attorneys need to do, they need to act in their
8 client's best interest; and it was my opinion that he
9 should have a team. When I say a law firm, I do have a
10 law firm, but he needed a team of lawyers with a wealth
11 of experience dedicated to this case.

12 Q. So for example, Mr. Flanders, who we just
13 referenced, is a partner at a law firm, Hinckley Allen
14 and Associates; is that correct?

15 A. That's correct.

16 Q. That is one of a handful of the biggest law firms
17 in the Providence area?

18 A. That's correct.

19 Q. They also have a presence in Boston. They are
20 what would be categorized as a large law firm, correct?

21 A. Yes.

22 Q. In addition to Mr. Flanders, there was also
23 another partner, Michael Connelly, who was assisting on
24 behalf of Mr. Caramadre in that matter?

25 A. Yes. I believe he's located in the Boston office.

1 But yes, they were both working on the matter along
2 with other associates.

3 Q. And they have a team of associates; is that right?

4 A. That's correct.

5 Q. Now, what type of resources would you be able to
6 offer Mr. Caramadre from your firm?

7 A. My firm -- I'm losing track now. I would say in
8 the litigation department of the lawyers that work on
9 litigation matters, and I'm going to pick a number
10 right now because I don't know what the number of
11 lawyers was back then, but let's just say we had six or
12 seven lawyers in the whole firm. Basically, it's me
13 and I would say Mr. DeMello out of those six or seven
14 lawyers that are primarily handling civil and criminal
15 litigation. And then we have another lawyer, Steven
16 Catalano, who was assisting us on motion practice,
17 misdemeanor stuff.

18 So basically we have three lawyers. And my
19 concern, which I expressed to Mr. Caramadre on numerous
20 occasions, is this wasn't a money case for me. This
21 wasn't a great case to have to promote a career. This
22 was the client getting the best defense. And not that
23 I'm not a very good lawyer, because I am a very good
24 lawyer; however, this needed the attention in my
25 opinion of multiple lawyers, and it needed full-time

1 attention all the time. And if I took on the case,
2 we're going to run into a situation of it's going to
3 consume close to 100 percent of my time, maybe not a
4 hundred but 85 percent of my time, then Mr. DeMello
5 would spend a lot of time on this case and now it's
6 interfering with the practice itself.

7 Q. And the obligations you have to other clients as
8 well?

9 A. That's right. That's why initially I only entered
10 a special appearance because I wanted Mr. Caramadre to
11 get a team of lawyers that could be dedicated to this
12 case.

13 Q. You indicated that Mr. Caramadre did not want to
14 do that. Could you explain what happened with respect
15 to that, how you winded up ultimately being his
16 attorney of record.

17 A. Sure. When the indictment came down,
18 Mr. Caramadre was arraigned, and I believe Magistrate
19 Martin, it's been a long time since I looked at this
20 particular issue, I believe Magistrate Martin put down
21 a determination of attorney, period.

22 And during that time period, Mr. Caramadre and I
23 attempted to get him other counsel, interviewing or at
24 least exploring other options with other lawyers. One
25 of the issues is going to be money in terms of

1 affording a team of lawyers.

2 **Q.** How much money were the candidates that you were
3 looking at seeking to represent Mr. Caramadre?

4 **A.** One that comes to mind right now, I think they
5 were talking about a million dollar retainer and maybe
6 costing more.

7 **Q.** Were there other firms that seemed to be cost
8 prohibitive?

9 **A.** I only met with, in terms of reputable Boston
10 attorneys, one firm with Mr. Caramadre. I know we
11 reached out to some others and Mr. DeMello may have
12 done that. In fact, I know he did that. I don't know
13 how far he got in terms of just phone conversations. I
14 don't believe -- I know that I didn't meet with any
15 other lawyers besides that one law firm, but I think
16 the consensus was this was a million dollar plus case.

17 **Q.** Were there challenges in identifying an additional
18 attorney in light of how many either witnesses or
19 companies that were potential victims of
20 Mr. Caramadre's scheme were already represented by some
21 of the quality counsel here in Providence?

22 **A.** One of the things that we initially looked at is
23 going outside of Rhode Island. Because of the sweeping
24 nature of this Grand Jury investigation and the
25 indictment, a lot of very good attorneys, maybe the

1 better criminal defense lawyers were already involved
2 in the case representing a witness or representing a
3 target or representing a company.

4 Q. Did you ever in dealing with this problem just
5 recommend to Mr. Caramadre that he should plead guilty?

6 A. Are you talking about --

7 Q. To solve this problem, because you're not going to
8 afford a great attorney, I'd advise you to plead guilty
9 in this case? Did you ever do anything like that?

10 A. At that initial stage?

11 Q. Yes.

12 A. Absolutely not.

13 Q. Why not?

14 A. Because it would be remiss of any attorney to have
15 a 66-count indictment returned not get a copy of the
16 discovery, which in this case as you know, Mr. McAdams,
17 was just again, I can't come up with any other word,
18 just whopping, overwhelming. Before an attorney can
19 give advice to a client, he needs to assess the case,
20 look at discovery, have discussions with the client.
21 And although I was involved pre-indictment, I didn't
22 have Jencks materials. I didn't have Grand Jury 302
23 reports, postal inspector memorandum of interviews and
24 things of that nature. So no, there were no plea
25 negotiations or plea discussions at that early stage.

1 Q. So after this process occurred where the Court
2 allowed additional time and allowed you to make a
3 special appearance, did you ultimately end up entering
4 your appearance formally to represent Mr. Caramadre
5 after the indictment?

6 A. I did.

7 Q. Approximately when was that?

8 A. I'd have to look at the Court docket, but I
9 think -- I know that Magistrate Martin -- the
10 arraignment might have been November 30th or late
11 November or early December. I know that Magistrate
12 Martin put down a determination of attorney date in
13 late December. I believe I would have entered my
14 appearance in December, I would stand corrected. I'd
15 have to look at the Court docket but I think December
16 2011.

17 Q. And did you ultimately end up seeking the
18 assistance of another defense attorney to help you
19 prepare the case for trial?

20 A. Yes.

21 Q. Who was that?

22 A. That would be Mr. McCormick.

23 Q. And how did that process unfold?

24 A. After Mr. Caramadre and I explored other options,
25 it was determined that -- Mr. Caramadre determined that

1 Boston firms were way too expensive. Number two, he
2 didn't believe that he needed, you know, a dream team.
3 He didn't need a Boston law firm to take on the case.
4 He had absolute faith in me. In fact, he wanted me to
5 do the case by myself. I recommended that we had to at
6 least get one other lawyer to assist. And
7 Mr. Caramadre and I wound up meeting with
8 Mr. McCormick, and Mr. Caramadre decided to hire
9 Mr. McCormick. So Mr. McCormick and I entered our
10 appearance together. In fact, I believe -- again, I'll
11 stand corrected, I have to look at the Court docket, I
12 believe that Mr. McCormick and I entered our appearance
13 at the same time because I insisted that other counsel
14 enter with me; because in my opinion even though I
15 thought we needed a bigger team, that I needed at least
16 one other attorney outside my firm to assist in the
17 defense of this indictment.

18 Q. And that's what ultimately happened. Yourself and
19 Mr. McCormick entered on Mr. Caramadre's behalf?

20 A. That's correct.

21 Q. And Mr. McCormick continued to represent
22 Mr. Caramadre for several months including the filing
23 of subsequent motions on the case?

24 A. Yes.

25 Q. Now, you referenced that it was a 66-count

1 speaking indictment. Fairly detailed?

2 A. I didn't say speaking indictment. But I did call
3 that speaking indictment during the course of the
4 representation.

5 Q. In other words, it actually specified in great
6 detail the nature of the allegations against
7 Mr. Caramadre and Mr. Radhakrishnan and there were
8 unnamed unindicted co-conspirators; is that right?

9 A. Yes. It was thorough. It was definitely with
10 specificity.

11 Q. Did you review the indictment with Mr. Caramadre?

12 A. Yes.

13 Q. What steps did you take to review the indictment
14 with Mr. Caramadre?

15 A. This was a long process. For example, let me go
16 backwards. If this was a one-count indictment, a
17 one-count wire fraud case, you would sit down with the
18 client in one sitting, maybe multiple sittings and go
19 over the indictment, and the count, what the elements
20 of the crime charged and the evidence. Okay? That
21 didn't happen in one or two sittings with respect to
22 this indictment because again this indictment was
23 ranging over approximately a 15-year period, involved
24 hundreds of annuity and bond transactions, was
25 complicated.

1 So I would say that that indictment was reviewed
2 with him over the course of time from the point that I
3 first received the indictment to the plea.

4 Q. So in other words, this was literally a constant
5 process because of the scope of allegations?

6 A. Absolutely.

7 Q. To meet with Mr. Caramadre, to discuss with him,
8 for example, the Government is alleging this, this is
9 how we're going to need to defend it?

10 A. Yes.

11 Q. So you had those types of conversations with him
12 repeatedly; is that right?

13 A. Yes.

14 Q. Now, in the course of those conversations, did
15 Mr. Caramadre ever make any admissions to you?

16 A. Yes.

17 Q. Okay. What were the nature of those admissions?

18 A. I'm trying to think because there's so many
19 different counts. Let me start with this. There was
20 an issue in the case where -- and I don't recall what
21 count it was. Actually, I do. It's Count 65, the
22 money laundering count. The money laundering count
23 involved an allegation that Mr. Caramadre gave Raymour
24 Radhakrishnan \$800,000 to invest in an annuity with
25 Midland National Life Insurance Company. One of the

1 things that I was looking at in terms of money
2 laundering, it was money structuring, money laundering
3 charge, was did Mr. Caramadre know that Raymour
4 invested the \$800,000 in Midland. This is why it's
5 significant.

6 I believe that transaction where
7 Mr. Radhakrishnan invested in Midland in late November,
8 November 30th, early December 2007 -- I apologize that
9 this is taking a little long, but I need to give this
10 explanation -- that transaction was charged, I believe,
11 because approximately five months beforehand, in June
12 or July of 2007, Midland National Life Insurance
13 Company had turned down, if you will, one of the
14 applications that was submitted by Mr. Maggiacomo as
15 the agent and Mr. Caramadre as the owner involved in
16 one of the annuity applications. And that transaction
17 was Lily Ianiero, who was one of the annuitants
18 involved in this investigation. She was named as an
19 annuitant in one of the Midland policies.

20 Mr. Maggiacomo was the agent. It got submitted to
21 Midland. Midland in terms of processing the
22 application turned around and I don't know if they
23 Googled Lily Ianiero but they did some investigation
24 and they wound up speaking to Lily Ianiero. Lily
25 Ianiero, the discovery shows, said that I never signed

1 this annuity application, I don't know what this is and
2 I don't know who this Mr. Caramadre is or this
3 owner/investor. I didn't give permission for anyone to
4 use me as an annuitant.

5 Midland wound up terminating or denying the
6 application. It got sent back. I think Mr. Caramadre
7 was the owner/investor. I'd have to look at documents.
8 It got sent back. It might have been a million dollars
9 investment on that one. Midland terminates and says
10 we're not accepting this annuity.

11 They did a post-termination or post-denial
12 investigation. They wound up terminating Eddie
13 Maggiacomo as their agent, meaning this: Eddie
14 Maggiacomo worked with LifeMark. That was his
15 broker/dealer. And he would write through certain
16 insurance companies. Midland said we're not taking
17 your business anymore, Mr. Maggiacomo. Okay?
18 Mr. Caramadre knew that. He acknowledged that he knew
19 that. He acknowledged that the Lily Ianiero annuity
20 application got denied. He acknowledged that Midland
21 didn't want to do this kind of business and so that was
22 that.

23 What was important for me for Count 65, this
24 money laundering count, was that four, five months
25 later after Maggiacomo gets terminated, after Midland

1 says no, we're not taking this kind of business,
2 Raymour Radhakrishnan winds up submitting an \$800,000
3 annuity application to Midland. And actually just to
4 be, so the record is clear, he initially put in \$20,000
5 in late November 2007, and he put in \$780,000 in
6 February 2008, but the initial annuity application was
7 made to Midland.

8 And part of what I was looking at in terms of
9 defense on that count was did Mr. Caramadre know that
10 Raymour was taking this money and submitting it to
11 Midland. Because if Mr. Caramadre doesn't know and he
12 gives Raymour 20 or \$800,000 although maybe not
13 believable, if he doesn't know that Raymour was getting
14 that money to submit it to Midland, then he can't be
15 structuring any illegal transaction because he doesn't
16 know that the \$800,000 is going Midland. Okay?

17 So it was important to me, did Mr. Caramadre
18 know. Because I was always troubled by Count 65. When
19 we had discussions in terms of problems with the
20 indictment, I'd always start with, and members of my
21 firm would get sick of me saying this, I'd always start
22 with Count 65, because to me that was just about a slam
23 dunk.

24 So during one of my meetings with him, meaning
25 Mr. Caramadre, I did a mock cross-examination, a

1 direct/cross with him because if my client tells me he
2 doesn't know about what Raymour is doing with the money
3 then maybe that is part of our defense. And I was
4 shocked when Mr. Caramadre said to me, No, I knew that
5 he was investing \$800,000 with Midland. I actually
6 knew it. In fact, not only did I know it, I wanted him
7 to invest in Midland because Midland had the best
8 product.

9 So that's one of the admissions. And I
10 apologize for the long detail but in order to explain
11 it I needed to give you that.

12 **Q.** I want to actually follow-up with you on your
13 concerns about Count 65. You just referenced those.

14 In addition to an admission like that and your
15 concerns about how to defend Count 65, was it in your
16 view, was Count 65 a problem for Mr. Caramadre for the
17 broader indictment in terms of inferences that the
18 Government would be able to argue from simply those
19 facts alone?

20 **A.** Count 65 -- my discussion I just had with you
21 right now, it wasn't just a problem on Count 65, which
22 it was, because Count 65 was going to be a serious
23 problem, but it was also indicative of the rest of the
24 nature of the indictment. In other words, what
25 representations or omissions are being made or

1 non-disclosure being made to the insurance company.
2 One of the things I didn't say with respect to the
3 Midland application was that I don't believe it was on
4 the actual annuity application itself, but in terms of
5 a financial disclosure or a financial worksheet that
6 Mr. Radhakrishnan had given to Midland, they asked for
7 certain information, meaning Midland asked for certain
8 information. It may have been Midland or may have been
9 Sammons. And Sammons was the broker/dealer. They're a
10 sister company of Midland, and they acted as the
11 broker/dealer.

12 So in the financial disclosure that
13 Mr. Radhakrishnan gave to Midland/Sammons was they
14 asked who do you work for, who is your employer. And
15 Mr. Radhakrishnan, at least, submitted that he worked
16 for Network Display -- I think it's Systems, which was
17 an unincorporated company, New Hampshire company, I
18 guess, where Mr. Radhakrishnan's family is from, where
19 he grew up. And I think Mr. Radhakrishnan had some
20 computer software that he was trying to develop, never
21 went anywhere, never made any money with it. And he
22 disclosed to Midland/Sammons that he worked for Network
23 Display Systems. He also, I believe, and I'd have to
24 take a look at the document because it's been months
25 and months since I reviewed the document, I'm going by

1 memory, I believe he disclosed on that financial form
2 that he made \$250,000 a year annually from Network
3 Display Systems, I'll call it NDS for short, and I
4 believe he also said he had a net worth of a million
5 dollars.

6 So the other problem I had with this is not only
7 is Mr. Caramadre giving money to Raymour to knowingly
8 invest in an insurance company that has said no to this
9 business directly, no, that there's also
10 misrepresentations, which is kind of like the wire
11 fraud portion of the money laundering element, okay, of
12 falsehood of who you work for, how much money you make,
13 and what's your net worth. And one of the concerns I
14 had was why isn't Raymour putting that he works for
15 Estate Planning Resources. Why isn't he putting the
16 address of Estate Planning Resources. I believe, I'd
17 have to take a look at it, Mr. McAdams, I believe he
18 put his New Hampshire address.

19 So you start looking at that one count and then
20 you start getting into the nature of the scheme, the
21 scope of the scheme, the pattern of the scheme, if you
22 will, in terms of putting false information on bond
23 applications, putting false financial information on
24 bond applications, putting false trading investment
25 experience on the applications, putting a phone number

1 for a joint tenant on the bonds, and I'm going to call
2 them a terminally ill person, putting the phone number
3 for Estate Planning Resources, so things of that
4 nature. Telling an insurance company when they're
5 asking what is the relationship between owner, meaning
6 the investor of the annuity, and the annuitant putting
7 I'm a friend, it's my attorney.

8 So Count 65, even though serious concerns on
9 Count 65, what was done on Count 65 reverberated to the
10 other counts.

11 Q. So in other words, you recognized that in proving
12 Count 65, the Government would in some ways be proving
13 the entire indictment in microcosm. Would prove an
14 agreement, conspiracy, would prove the fraud, would
15 prove potentially the identity theft or aggravated
16 identity theft, and so it would be able to argue all
17 those things to the jury?

18 A. It would have been damaging to the other counts.
19 Not dispositive, but it would have been pretty strong
20 evidence on the other counts and the other fact
21 patterns that supported the other counts.

22 Q. Is it fair to say you spent a lot of time thinking
23 and trying to analyze how as defense strategy you would
24 defend that?

25 A. You can't imagine how much time. I don't know how

1 much time, but it consumed my practice. It started to
2 consume my life, too.

3 Q. Were you kind of -- initially, I had started
4 asking you about in an open, broad way admissions that
5 Mr. Caramadre had made. You answered that it was hard
6 without some specificity. You just referenced bond
7 accounts, joint bond accounts with terminally ill
8 people where Mr. Caramadre or some other person would
9 be on the application.

10 Was one of the companies that offered those bond
11 accounts Ameritrade?

12 A. TD Ameritrade.

13 Q. And did you have conversations with Mr. Caramadre
14 about some of the misrepresentations that were made to
15 Ameritrade?

16 A. Yes.

17 Q. What types of conversations did you have with him
18 about that?

19 A. First of all, the form itself. TD Ameritrade
20 had -- might have been, I forget how many pages, but I
21 think there were three parts to the TD Ameritrade
22 application. There was the initial application to open
23 up a bond account. Then there was, I think, a couple
24 more pages for the -- if you wanted to apply for
25 margin, and I think there might have been a couple more

1 pages if you wanted to apply for options. But I think
2 the whole form itself might have been seven or eight
3 pages. I'd have to take a look at it.

4 Q. This would be an application where there would be
5 two parties, one would be the owner and that would in
6 many instances be Mr. Caramadre; but in other
7 instances, someone else would respond, Mr. Craddock or
8 someone else?

9 A. Yes.

10 Q. Then the co-owner would be the terminally ill
11 person?

12 A. If my memory serves me correct, I'd have to take a
13 look at it, I believe that's page one of the
14 application where on the first page of the TD
15 Ameritrade application, it would usually be
16 Mr. Caramadre or Mr. Craddock, and then that would be
17 the top half of the page, and then the bottom half of
18 the page would be the joint tenant, the terminally ill
19 person.

20 Q. And as you reviewed the discovery that the
21 Government produced to you in connection with the case
22 and you saw those applications and when you say the
23 witness statements, the Grand Jury testimony, the
24 interview reports of the various family members of the
25 people that had been named as terminally ill who had

1 since passed and, in fact, the folks that were in the
2 depositions as well, did it come to your attention that
3 universally that they said that the information that
4 was listed regarding their finances, their experience
5 was false?

6 A. Yes. It was all false.

7 Q. And that wasn't simply on the Ameritrade forms.
8 That was on other companies as well, correct?

9 A. I don't know all of them right now, but E*TRADE,
10 Scottrade, TradeKing and a bevy of other
11 broker/dealers.

12 Q. And some of these were applications that were
13 handwritten and submitted by fax or otherwise? And
14 others were actually applied to online; is that
15 correct?

16 A. Correct.

17 Q. So did Mr. Caramadre ever offer any explanations
18 regarding how that information that was false got
19 there?

20 A. Yes.

21 Q. What did he say?

22 A. I asked, because when you have -- I think
23 Ameritrade was approximately 39 bond applications and
24 then they went from Scottrade, E*TRADE, TradeKing, I
25 don't know exactly how many, whether 80 accounts, I

1 don't recall. I think 39 were TD Ameritrade. One of
2 my concerns is they're all false. They're all wrong.
3 And in fact, I think I had done an analysis at some
4 point. There might be ten boxes for each one maybe
5 asking for financial information or trading experience
6 for the joint tenant, and I think they're almost all
7 checked off the same. So that was a concern. So I
8 wanted to know.

9 What he initially told me was that it was a
10 mistake. He was willing to stipulate, which we really
11 didn't have a choice because it is what it is, it was
12 all false. He was willing to stipulate that all the
13 information was false.

14 What I never got a good answer on was why all of
15 this was false. The first discussion I had with him
16 was at the first person, who might have been Denise
17 Egan, I don't recall, that was in fact their
18 information and then what happened was the interns just
19 happened to use that same information. And I processed
20 that explanation. I looked at the discovery again, and
21 I did some thinking. And I said to myself, well, that
22 doesn't hold water because, number one, let's go from
23 TD Ameritrade, I don't remember what the next
24 broker/dealer they used was. Let's pretend it's
25 E*TRADE, for example. The forms are different. I

1 remember, if I recall correctly, it's been a while,
2 that some of the forms actually required you to write
3 in the number of years experience. So for example, it
4 would ask a question, how many years experience, joint
5 tenant, do you have. It would be written in "ten
6 years." The TD Ameritrade applications were boxes. So
7 if it asked for information on the joint tenant, how
8 many years experience do you have, it would say -- I
9 don't remember the parameters, but zero and a box --
10 no, zero to five, six to ten, okay?

11 So if, in fact, there was a mistake, how could
12 it be a mistake when you're going from TD Ameritrade to
13 another application from another broker/dealer because
14 these are boxes, and you're writing it in. Okay?

15 The other thing that troubled me with that
16 explanation was when you look at the files, the actual
17 hard files of Estate Planning Resources, nowhere in
18 their file are there any notes or in the jacket of
19 asking the joint tenant, the proposed joint tenant
20 their financial information or their net worth or their
21 annual income. There's nothing in there. So there
22 can't be a mistake. So that was the initial
23 explanation I received from him.

24 **Q.** You actually reviewed the notes that were in the
25 files for Estate Planning Resources that were after a

1 meeting with the terminally ill person?

2 A. Yes.

3 Q. And the relevant information listed there was
4 essentially date of birth and Social Security number;
5 is that correct?

6 A. Might have been an address of a family member or
7 phone number, but nothing whatsoever on trading
8 information, financial information, net worth, nothing
9 like that.

10 Q. So that was the initial explanation you got from
11 Mr. Caramadre. Did you revisit that issue with him?

12 A. I did. And I'm trying to recall. I don't think I
13 got another explanation or a substantive discussion I
14 can think of until after I spoke to Raymour
15 Radhakrishnan when I interviewed him.

16 Q. And what explanation did you get?

17 A. From?

18 Q. From Mr. Radhakrishnan.

19 A. Couple of different explanations. Initially, he
20 told me the same thing, that it was the interns that
21 made a mistake. And then I immediately questioned him
22 on that can't be, because -- for all the reasons I just
23 testified to. It just can't be. Well, how can you
24 justify -- someone is going to get cross-examined on
25 how is this written in but this is a box checked off

1 over here. There's nothing in Estate Planning
2 Resources' files.

3 Number three, I heard that the interns copied
4 the wrong information or they're writing in
5 information. Well, if they're writing in the
6 information, what is their basis for checking off
7 certain boxes? And on top of it, if you're the one
8 meeting with -- this is Raymour -- if you're the one
9 meeting with the proposed joint tenants and you're
10 coming back with no information and then you're giving
11 the applications to the interns to say finish it or
12 complete it, what's their basis for completing it?
13 You've got to have a discussion with them.

14 So if anyone's going to give that explanation,
15 it's not going to fly and I'm not submitting it because
16 I'm not comfortable with that explanation because as
17 attorneys we have obligations to the court. We can't
18 submit false information.

19 So after that, he then said the following:
20 Well, what if I told you that it was my information,
21 meaning Raymour Radhakrishnan's information. You know,
22 I was the one doing the trading on the accounts, not
23 the joint tenant. So, you know, it's my information.
24 So actually, it's correct if I say it's my information.

25 I immediately responded, Well, that's funny

1 because on this form it says someone has ten years
2 experience. You're going to say that this is your
3 information and it has ten years experience? Because I
4 knew these documents inside and out. I immediately
5 said ten years? You are what 24, 25, and you're going
6 to say you're trading back to 14 or 15 years old? That
7 doesn't fly.

8 And then -- and this was, I kind of said it to
9 him maybe even a little harsher than I'm saying it to
10 you now because we're gearing up for trial and we need
11 to know what we're going to do to defend against this
12 serious allegation of this false information, which by
13 the way it was. But what's our explanation for it?

14 And then he responded back, Well, me and Joe
15 just wanted a smooth account application process. I
16 don't remember the exact words. I remember he used the
17 word "smooth." We just wanted a smooth application
18 opening process. Something to that effect.

19 Q. In other words, they wanted to make sure that the
20 application would be approved; and that if they listed
21 the actual correct information on these terminally ill
22 people who universally had zero assets, no experience,
23 they're destitute, which is why they were coming to
24 Mr. Caramadre in the first place in response to an ad
25 in the Catholic paper, then that might have led to the

1 rejection of those applications?

2 A. Right.

3 Q. Did you talk to Mr. Caramadre about that
4 explanation again?

5 A. Yes.

6 Q. What was that conversation?

7 A. From what I remember, he didn't -- I explained how
8 I just explained it, the meat on the bones, so to
9 speak. He didn't have an explanation.

10 Q. Did he revert to some type of legalistic
11 explanation?

12 A. Hold on, Mr. McAdams. I had so many conversations
13 with him, it's -- I believe -- what I just testified
14 to, that's what Raymour told me, not Mr. Caramadre. It
15 was important for me to discuss that with Mr. Caramadre
16 when he didn't have an explanation and I'm saying,
17 Well, we need to know. You know, did you know this?
18 Did Raymour do this on his own? We need to know.
19 Because the other thing was Joseph's signature, and
20 sometimes it was a stamp because there was a stamp of
21 Joseph's signature in the office that upon my review
22 some of those applications were stamped, which would
23 have been maybe part of the defense but a lot of them
24 were signed, we need to know what is the explanation
25 for this. And whenever I would bring a real difficult

1 question that needed to be discussed because if we're
2 going to go to trial, we need to discuss this, he would
3 say this: It just doesn't matter.

4 Q. The truth will set him free?

5 A. It just doesn't matter. The truth -- I don't
6 recall him saying that at that particular time, but it
7 was it doesn't matter because I had -- this is what it
8 is. My information is correct. Whatever his
9 information was, he's worth 10 million, 20 million, he
10 had 20 years experience, whatever it was. Who cares
11 what there was. Who cares? We could have put zero
12 down, and they would have opened the account anyways.

13 Q. So Mr. Caramadre, who was a wealthy man who was
14 very experienced at reading the fine print in
15 contracts, had his written signature on the pages of
16 these applications right below, immediately below where
17 the false information was, correct?

18 A. Yes. And I know I had this discussion with him
19 many times, that you profess to be this speed reader
20 and genius and you've read thousands of pages of bond
21 prospectuses. You are going to get cross-examined by
22 either Mr. Vilker or Mr. McAdams and they're going to
23 say here's your signature, sir, right underneath the
24 false information. Are you saying that you missed it
25 on this one application? Okay. We'll grant you that.

1 How about the second bond application, the third one,
2 the fourth, all way to the bond application number 39
3 and then on to the other broker/dealers? I had a
4 discussion with him on that because I knew it was
5 coming because that's what I would do if I was the
6 prosecutor.

7 Q. His cross-examination at trial would have been,
8 had he can chosen to testify, would have gone on for
9 days, if not weeks, correct?

10 A. It would have went on, absolutely, but that's if
11 he would have testified, because one of my
12 strategies -- one of my ways of handling this case
13 because we didn't walk into this case -- I know we
14 didn't give an opening statement. We did not walk into
15 this case blind, like let's just see what happens. One
16 of my strategies was how can I get Mr. Caramadre's
17 exculpatory words, because in the discovery,
18 Mr. McAdams, there were some exculpatory information.
19 I was going to put on the best defense I could for
20 Mr. Caramadre. And one of my strategies was how can I
21 get Joseph's exculpatory words to come in through
22 Government witnesses. And because it was my strategy
23 at the end of the Government's case to obviously get
24 up, and I think Mr. Traini probably would have handled
25 this part, get up and make a Rule 29 motion, motion for

1 judgment of acquittal, and to the extent the
2 Government's case in whole or in part stayed intact was
3 to have a conversation with Mr. Caramadre of whether or
4 not he testifies.

5 Now, it's the client's decision, just like it is
6 a client's decision to plea. It's his decision to
7 testify or not to testify, but I was working towards a
8 goal of getting Mr. Caramadre's exculpatory remarks,
9 which there were in discovery, which I saw some, and
10 then let you close and not have Mr. Caramadre testify.
11 Because in my opinion, Mr. Caramadre would have made a
12 terrible witness.

13 Q. So it's your goal as his legal advisor to present
14 his defense in the best way possible and avoid the
15 possibility that he needed to testify?

16 A. Yes. But ultimately, he probably would have
17 testified because it's his call and I can't see him not
18 testifying, but we agreed -- what we agreed to do was,
19 which is a smart thing, which is one of the reasons why
20 we didn't give what I would call a pre-Government case
21 opening statement, we didn't know if he was going to
22 testify. I didn't know if I could put him on based on
23 some of the admissions. So I do not want to promise a
24 jury something, get up there in this very complicated
25 case that was going to take three to four months and

1 make promises, so that's why we met.

2 Q. Let's take a step back a little bit and talk about
3 that, that trial strategy. I want to focus your
4 attention on before the trial actually started. The
5 case was indicted in November 2011, and the trial was
6 roughly a year later.

7 A. The trial was November 2012.

8 Q. The trial was November 2012; the indictment was a
9 year earlier, November 2011?

10 A. Yes.

11 Q. And during that period of time, did you attempt to
12 develop a defense strategy?

13 A. Yes.

14 Q. And we've talked about it. This was a complex
15 indictment. There were many different counts; is that
16 right?

17 A. That's right.

18 Q. Many different actual criminal statutes involved?

19 A. Yes.

20 Q. It was going to require a multi-pronged defense;
21 is that fair to say?

22 A. Yes.

23 Q. We also talked about the fact that there were
24 numerous witnesses that were expected to testify?

25 A. Yes. I want to say one thing. It's a multi-count

1 indictment, but in the federal system what counts is
2 this because we had the issue of relevant conduct: You
3 get convicted of one count, then there's an issue
4 because when you come up for sentencing the Court takes
5 into consideration relevant conduct.

6 Now, in this case there were 66 counts,
7 conspiracy I believe is a statutory max of five years.
8 If someone gets -- and I think it's Count 33, but I
9 have to take a look at the indictment. If he gets
10 acquitted of 65 counts and only gets convicted of Count
11 33, conspiracy, well, even though the Court takes into
12 consideration relevant conduct, the Court can only
13 impose a statutory max of five years versus a mail or
14 wire fraud 20 years, money laundering which is 10, I
15 think the obstruction is 15.

16 So, yeah, I'm developing a strategy on each of
17 the counts, but the way I viewed it, this was,
18 especially for Mr. Caramadre, this is an all-or-nothing
19 proposition. We need to win 66 counts because getting
20 convicted on one count is going to be problematic.

21 Q. Because potentially the sentencing consequences,
22 even if he were convicted of one of the counts, could
23 be enormous. So for purpose of his life, it might not
24 make much of a difference with the other 65?

25 A. I also forgot there were five counts of aggravated

1 identity theft, which carried a mandatory minimum of
2 two years.

3 Q. You developed a strategy. Did you work with
4 Mr. Traini to develop a defense strategy as well?

5 A. Hand-in-hand.

6 Q. Now, did Mr. Caramadre have -- first of all, let
7 me rephrase that question.

8 In the months leading up before the trial, were
9 there efforts made to avoid a trial with
10 Mr. Radhakrishnan?

11 A. Could you repeat that.

12 Q. Were there efforts made to avoid a joint trial
13 with Mr. Radhakrishnan?

14 A. Those efforts started from the return of the
15 indictment.

16 Q. Fair to say Mr. Caramadre did not want to have a
17 joint trial with Mr. Radhakrishnan?

18 A. Didn't. But I also want to say in fairness to
19 Mr. Caramadre, neither did defense counsel because it
20 was problematic. But, yes.

21 Q. Because you looked at not only Mr. Caramadre's
22 conduct but also in a conspiracy case the evidence that
23 he would be held accountable for that Mr. Radhakrishnan
24 had committed?

25 A. Right. Now, if the Court would have granted a

1 severance, which I thought when we got to the severance
2 motions were denied was a serious draw back but
3 probably right on the law because it was a conspiracy
4 case. But the same evidence would have come in, which
5 is why the law on conspiracy is that you're tried
6 together, because the same evidence basically is going
7 to come in. However, I didn't want Mr. Radhakrishnan,
8 and neither did Mr. Caramadre, sitting next to him at
9 defense table because if he's not there, then our
10 strategy can change a little bit because I am going to
11 look at that jury, okay, and I'm going to point the
12 finger right at Radhakrishnan. If he's sitting next to
13 us, it's a problem because, one, he's sitting next to
14 us and he knows what we're doing and who knows if he
15 starts pointing a finger back.

16 So I want to be clear. It was Mr. Caramadre's
17 goal to have a separate trial but it was also -- I
18 agree with that approach.

19 **Q.** From a defense strategy standpoint, you thought he
20 had a better chance of beating the case?

21 **A.** I still think it would have been a very difficult
22 case to overcome. I don't think if the severance
23 motion was granted that we'd be sitting pretty and
24 looking to win the case, but it's a better case to try
25 for the Defendant, Mr. Caramadre.

1 Q. And this was something that Mr. Caramadre also
2 strongly desired?

3 A. Oh, he definitely wanted a severance.

4 Q. That's based on statements that he made to you?

5 A. Yes.

6 Q. Now, as you alluded to, that motion was denied.
7 And then there came a point in time where as a defense
8 team you requested a bench trial. Do you recall that?

9 A. Yes.

10 Q. That was to separate who would find the defendants
11 either guilty or not guilty?

12 A. Yes. It became abundantly clear we weren't
13 getting a severance based on Bruton issues or
14 evidentiary issues or anything like that. Although you
15 have to be careful of what you wish for in asking for a
16 bench trial because you give up the issue of unanimity
17 that's required of a jury of 12 versus the Judge as the
18 trier of facts deciding guilty or not guilty. But I
19 thought there was a pretty good argument in terms of
20 saying, Okay, Court, Government, the law of conspiracy
21 is you have to be tried together. It's the right thing
22 to do. It's the law. And you have judicial economy.

23 Well, if you have a bench trial that happened at
24 the same time as Mr. Radhakrishnan's jury trial, then
25 we have all the judicial economy in the world because,

1 your Honor, you can decide Mr. Caramadre's fate and the
2 jury can decide Mr. Radhakrishnan's fate and we're not
3 having two trials. We're having one.

4 So I thought it was a neat way of getting a
5 built-in severance without having two trials.

6 Q. So in other words, you were hoping to somehow
7 still be able to stand up and point the finger at
8 Mr. Radhakrishnan but with potentially maybe not having
9 as much damage coming back?

10 A. Yes, we wanted a severance for that reason. But
11 we also wanted a severance because, let's face it,
12 optically this was a bad optics case. This is someone
13 investing a lot of money and basically betting on
14 people's lives. And just the public opinion on that,
15 let's face it, it's just not a good thing.

16 One of the things that I had planned to argue to
17 the jury in closing arguments, because we can't argue
18 in opening statements is that, you know, you may not
19 like this. You don't have to like it. The issue is
20 whether Mr. Caramadre and Mr. Radhakrishnan conspired
21 with one another and whether they lied to insurance
22 companies and broker/dealers. But let's face it. That
23 was the 800-pound elephant in the room. This was just
24 a bad optics case.

25 Q. Now, with respect to the issue of the bench

1 trial --

2 MR. McADAMS: I'd like to mark Government
3 Exhibit 13, which is --

4 THE COURT: Is there any objection?

5 MR. OLEN: No, your Honor.

6 THE COURT: All right. Government 13 will be a
7 full exhibit for this hearing.

8 (Government Exhibit 13 admitted in full.)

9 Q. Mr. Lepizzera, first of all, can you see that
10 document?

11 A. I just need you to zoom back out so I can see the
12 date. Go ahead. That's fine.

13 Q. Is this a copy of your notes?

14 A. Yes.

15 Q. That's your handwriting?

16 A. My handwriting.

17 Q. Indicates September 18, 2012, follow-up meeting
18 and then circled with JAC and AMT?

19 A. JAC stands for Joseph A. Caramadre and AMT is
20 Anthony M. Traini.

21 Q. And there's various topics, for example,
22 references discussing the chambers conference that had
23 occurred earlier, and then the next line down it says
24 that Mr. Caramadre signed a letter rejecting plea
25 negotiations. Do you recall that?

1 A. Yes, I do.

2 Q. I just want to scroll down to the bottom of the
3 note. And it indicates a summary chart on annuities
4 and a box and then it says: Discussion of JAC, that
5 would be Mr. Caramadre's, cross-examination of an
6 underwriter. And then it writes: Which segues into a
7 possible bench trial prompted by JAC. Is that right?

8 A. That's what it says.

9 Q. Did the notion to come and request a bench trial
10 come from Mr. Caramadre?

11 A. Could you zoom back out just so I can see the date
12 at the top of the notes.

13 Q. December 18th, 2012.

14 A. Can I have a moment just so I can think of that
15 meeting because I had many discussions with him.

16 I believe, which is why I wrote "which segues
17 into a possible bench trial prompted by Mr. Caramadre,"
18 I believe he brought it up at this meeting. But I want
19 to make something clear. We had a discussion about a
20 bench trial. I'd have to take a look at some other
21 notes and maybe e-mails, but we had a discussion of a
22 possible bench trial which I had did some research on
23 which is rare in a conspiracy case. I think there were
24 three cases in the country, one by Judge Pettine in the
25 '70's.

1 So I think we had a discussion about this stuff
2 back in April or May of 2012. So I want to be fair to
3 Mr. Caramadre and the record clear that I believe he
4 brought it up at this meeting, this bench trial, but we
5 had other discussions about that earlier.

6 Q. So it wasn't a new topic that you raised the
7 possibility of requesting a bench trial?

8 A. That's correct.

9 Q. You ultimately filed a motion for a bench trial?

10 A. Yes.

11 Q. Which was subsequently denied?

12 A. It was denied.

13 Q. Now, we've had a lengthy back and forth on the
14 defense strategy that you had. Did Mr. Caramadre have
15 strong feelings about what the strategy should be in
16 this case?

17 A. I know this issue has come up in the pleadings
18 about what the strategy was. Mr. Caramadre really had
19 a hands-off approach with this whole thing. In fact,
20 you know, I would meet him at times because the way I
21 operated was let's say I would take five witnesses,
22 Grand Jury, 302's, analyze the memorandum of interview
23 for the postal inspector. And then I would think of
24 some things, some issues, some problems and I would
25 meet with him. And he would say to me: You worry too

1 much. You're spending too much time on this. You
2 know, Mike, I trust you. I know you're working so hard
3 on this, but you just need to back off. Don't worry
4 about -- you're worried about the Government's case.
5 You're worried about this minutia. Don't get into the
6 minutia. Okay? I'm the master of the facts. I know
7 the case. All you need is me next to you at trial.
8 Don't worry. We're going to win this whole case.

9 So I'm surprised about this claim about lack of
10 investigation, lack of getting an investigator because
11 that just didn't happen. There was an issue of getting
12 an investigator late in the case, maybe October 2012,
13 but for limited witnesses, but there was never an issue
14 about where is the investigator early on. Just the
15 opposite. He's telling me, You're worrying too much,
16 Mike. Don't worry about the minutia.

17 So he was really hands-off, and I think he
18 thought he was just going to get on the stand and
19 explain everything away.

20 **Q.** We'll talk about the investigator and the
21 interviews in a few minutes. But in terms of
22 Mr. Caramadre's strategy, did he have any strong
23 feelings about taking an attack-the-Government type
24 approach for defense of the case?

25 **A.** He was somewhat misguided in terms of what this

1 trial was about.

2 Q. What do you mean by that?

3 A. This trial was about the Government proving,
4 attempting to prove beyond a reasonable doubt whether
5 he committed the 66 counts charged in the indictment.
6 That's what was at issue, because that's the
7 Government's burden. I know that as lawyers sometimes
8 instructions are given, we pooh-pooh instructions given
9 to jury members about the Government's burden, the
10 defendant doesn't have to do anything. They really
11 mean something. Okay? And you, Mr. McAdams, Mr.
12 Vilker, the United States of America needed to prove
13 beyond a reasonable doubt that Mr. Caramadre conspired
14 with Mr. Radhakrishnan and that's what the case was
15 about.

16 This case wasn't about malicious prosecution.
17 And what Mr. Caramadre continuously would get into
18 trying to prove his innocence, getting the Government's
19 skin in the game, that he wants Mr. Vilker or, Vilker's
20 and McAdams' and Souza's skin in the game. Which meant
21 this: Never any discussions about we're not doing this
22 or we're not investigating properly. It was I want an
23 Office of Professional Responsibility complaint against
24 McAdams, Vilker, possibly Souza, Postal Inspector Souza
25 and possibly McDaid, but primarily against you and

1 Mr. Vilker. It was filing disciplinary complaints.
2 One was lodged against Mr. Vilker, which I think was
3 summarily dismissed, getting a disciplinary complaint
4 filed against him in New York.

5 Mr. Caramadre frequently referred to FBI Agent
6 Pamela McDaid as Cookie McDaid. So if I happen to slip
7 and call her Cookie McDaid, I apologize, but it's built
8 in my brain because he said it so many times. Wanting
9 to show that the FBI agent, Cookie McDaid and Postal
10 Inspector Souza brainwashed the 30 or 40 or 50 or 60,
11 how many there are, terminally ill people or their
12 family members into believing that they really knew
13 what was going on in terms of opening up a bond
14 application, opening up a bond account, consenting to
15 be an annuitant.

16 And in summary, that's what he was interested in
17 doing. Almost -- I think I referred to it at one
18 point, you know, he's interested in this malicious
19 prosecution claim. There is not a malicious
20 prosecution claim. And in fact, malicious prosecution
21 claim would be Mr. Caramadre, Joseph Caramadre versus
22 the United States of America. But guess what? You
23 never get to a malicious prosecution claim, which is
24 really, really rare because just because you get an
25 acquittal doesn't mean you have a malicious prosecution

1 claim because that's a very high standard.

2 But even before you get to potentially filing a
3 malicious prosecution claim, you have to go 66 for 66
4 on the indictment. And there's no way -- I thought
5 that was complete suicide if we're going to try a
6 malicious prosecution case in the case of United States
7 of America versus Joseph Caramadre. I wasn't going to
8 get into that game. First of all, it was a dead loser,
9 because I don't think Cookie McDaid or Postal Inspector
10 Souza brainwashed 30 or 40 or 50 or 60 witnesses to
11 believing that, Oh, yeah, I really didn't know what was
12 going on back then. I didn't see that as a viable
13 defense. I thought it was complete suicide. And it's
14 not our burden in a criminal case. The defense
15 lawyer's job in a criminal case is to defend against
16 the charges and put the Government to the test, prove
17 your case beyond a reasonable doubt.

18 So that was his strategy, to get your skin in
19 the game and Mr. Vilker's skin in the game.

20 Q. He was pretty obsessed with that, wasn't he, to
21 the point where he would disregard your advice; is that
22 fair to say?

23 A. He had a lot -- this is what he expressed to me.
24 He had a lot of faith in me. He still would go back
25 to -- he would listen to me because I'd say this is how

1 we try a case. And then when I would do more work and
2 then have a meeting with him and bring more -- I won't
3 say bad news, but here's some challenges in the
4 evidence, here's some challenges in the case, he
5 wouldn't address them head on. He would just say,
6 We've got to stop playing the Government's game; we've
7 got to get their skin in the game.

8 Q. To the point where he actually went out, took
9 steps to have his version of the story put out through
10 a media piece; is that right?

11 A. That's right. Now that you said that, you just
12 refreshed my memory. We spent a lot of time on this
13 press release stuff, this, you know, outside-of-court
14 statements.

15 I mean, I understand. Mr. Caramadre has done a
16 lot of good. He really has. He's given to charities.
17 He's served on boards. He's done a lot of good. Okay?
18 And it was really important to him to get the public
19 opinion back on his side because he got thrown off
20 boards, which meant a lot to him, which he spent a lot
21 of time on. At least that's what he told me. I didn't
22 personally observe it, but he was on all these boards.
23 And his goal was to prove, which again that's not what
24 we do in a criminal case, prove that the Government
25 basically screwed him, that these were false

1 allegations so he could get back on boards and do his
2 thing. And I've got to keep on reeling him back in.
3 I'm sorry, and I feel bad for him because when you've
4 got a 66-count indictment against you, that's
5 difficult. Especially a man of his stature. But what
6 we needed to do was we'll worry about public opinion
7 later. In fact, I don't know if we're ever going to
8 bring the public opinion back to where it might have
9 been before, wherever it was. We need to concentrate
10 on this case.

11 So the other thing was, his strategy was press
12 releases, documentaries. It just had no place in this
13 court and it didn't further the defense of this case.
14 It really was difficult to deal with him, which is
15 getting back to in November when we were looking for a
16 dream team, it's not that I am not capable because I am
17 very capable. I'm a very good lawyer. It was the
18 issue of this was an overwhelming case with an
19 overwhelming client. And the way I envisioned -- I
20 didn't say this but the way I envisioned, if I was
21 going to stay involved, and quite frankly my goal was
22 to be his friend instead, not get paid, sit on the
23 sidelines, have him get his counsel and just stay out
24 of it because this wasn't a career case for me. This
25 wasn't about money. This was about making sure that he

1 got the best defense. But to the extent I was going to
2 be involved with a big law firm and if they wanted me,
3 which one of the firms that we talked about wanted
4 this, that I would have the client control which is why
5 I needed counsel to work with me on this case, because
6 managing hundreds of thousands of pages of documents,
7 coming up with strategy, we're talking about not only
8 66 counts. We're talking about two or three hundred
9 business transactions that occurred over a 15-year
10 period and then having client control.

11 Q. I just want to, just to follow-up on the point you
12 just made, I'm going to mark as Government Exhibit 14,
13 this is an e-mail, it's Bates number 461.

14 THE COURT: Any objection to 14?

15 MR. OLEN: Judge, could I see it again for a
16 moment, please.

17 MR. McADAMS: Sorry. It's an e-mail from
18 Mr. Lepizzera to Mr. Traini.

19 MR. OLEN: No objection.

20 THE COURT: 14 will be full.

21 (Government Exhibit 14 admitted in full.)

22 Q. It's on Mr. Traini's e-mail at the top. The
23 e-mail says it's from you, Mr. Lepizzera, to him,
24 correct?

25 A. Yes.

1 Q. This is dated October 23rd, 2012, roughly three
2 weeks or so before the trial was to begin?

3 A. Yes.

4 Q. Now, you write: Joe and I talked tonight at
5 church. He listened to Bob's cross and he just cannot
6 give up the cross-examination. He's absolutely stuck
7 on Mizzoni's statement that Cookie McDaid showed him a
8 list with all the names on it. You know, the list that
9 was going to make Joe a "multi, multi-millionaire."

10 Do you recall this e-mail?

11 A. Yes.

12 Q. It goes on and says: He said his wife would kill
13 him if that stuff doesn't come out at trial because
14 that's what the malicious prosecution claim is premised
15 upon. And then you wrote: Yes, I kid you not.

16 The question I have is, is this an example of
17 the type of communications you had with Mr. Caramadre
18 about trying to get him focused on the crime as opposed
19 to his focus on this malicious prosecution?

20 A. It's the very type of discussions we would have
21 with him and what was going on.

22 Q. Did you memorialize every single instance of those
23 type of conversations?

24 A. I didn't. We had multiple communications like
25 this. If I did that, I'd be asking for a continuance.

1 We would have never gotten to trial.

2 Q. We'll come back to that exhibit in a little bit,
3 but I just wanted to move on.

4 THE COURT: We'll go to about noon and then
5 we'll take an hour-and-a-half. If you come to a good
6 stopping point, let me know.

7 MR. McADAMS: Okay.

8 Q. Now, I just want to bring you back to a point that
9 we were discussing earlier, and that is whether or not
10 Mr. Caramadre requested that you, you meaning the
11 defense team, hire an investigator and interview any
12 potential witnesses.

13 Now, in general what was the defense's approach
14 to investigating the case, so to speak, and
15 interviewing witnesses?

16 A. When Mr. McCormick came on, he was suggesting that
17 we get an investigator. We never did. And the reason
18 why we didn't is because Mr. Caramadre explained we
19 don't need one. What do we need an investigator for?
20 So we never did.

21 Q. Mr. Caramadre actually did not want to get an
22 investigator?

23 A. Did not want to get an investigator. I'm talking
24 about pre-October 2012. And in fact, it jives back to
25 what I was telling you, he said why do we need that.

1 He didn't say "the master of facts," but he would say,
2 you know, I know everything. I'm the smartest man in
3 the room. I'm going to be the smartest man in the
4 room. Mr. Vilker and Mr. McAdams don't know what
5 they're talking about. I'm going to clear all this up.
6 We don't need an investigator. We just don't need an
7 investigator.

8 Q. I'm just going to mark as an exhibit, and we won't
9 go through it in great detail, but Government Exhibit
10 15, which is an e-mail from Mr. Caramadre's account and
11 it's from Mc Law. Is that Mr. McCormick's e-mail
12 address?

13 A. That's correct.

14 Q. To Mr. Caramadre and yourself, June 2003.

15 MR. McADAMS: Move that into evidence.

16 MR. OLEN: No objection.

17 THE COURT: This is what number?

18 MR. McADAMS: This is Number 15, your Honor.

19 THE COURT: All right. 15 will be full.

20 (Government Exhibit 15 admitted in full.)

21 Q. Mr. Lepizzera, this is in June of 2012, where
22 Mr. McCormick is recommending that you get an
23 investigator?

24 A. Yes.

25 Q. And it was Mr. Caramadre who directed that that

1 not happen, it was unnecessary?

2 A. Yes.

3 Q. Now, you referenced that there was a later point
4 just before trial began where there was sort of a
5 renewed push by Mr. Caramadre to interview some
6 witnesses. Do you recall that?

7 A. Yes.

8 Q. What do you recall the circumstances about that
9 being?

10 A. My memory is I think the issue popped up in early
11 October, 2012, and I was surprised because we are in
12 crunch time now preparing for trial and he's asking for
13 let's get an investigator.

14 So his request for an investigator wasn't I want
15 to investigate 200 witnesses. I think they concerned
16 particular witnesses. And the reason why I believe
17 that popped up was actually a reaction because I
18 believe, and this is my memory, and I don't know what
19 the Government was doing, but the Government may have
20 been either serving subpoenas of witnesses for trial or
21 prepping witnesses for trial and word may have gotten
22 back to Mr. Caramadre that's what the Government was
23 doing. And basically, I think the way this interview
24 situation came up for the most part was, well, if
25 they're doing that, why aren't we doing that. We've

1 got to let them know that we're working on this and so
2 let's get an investigator.

3 Q. I'd like to turn your attention to what I'll mark
4 as Government Exhibit 16, an e-mail from Mr. Caramadre
5 to yourself. This is actually an exhibit to
6 Mr. Caramadre's motion.

7 MR. OLEN: No objection.

8 THE COURT: 16 will be full.

9 (Government Exhibit 16 admitted in full.)

10 Q. It's from Mr. Caramadre, October 8th, 2012. It
11 says: Mike, when are we going to discuss updates of
12 the case? Danielle just called to inform me that an
13 FBI agent was looking for her at her home on Friday.
14 We need to get a PI on board ASAP.

15 Does that refresh your recollection as to those
16 circumstances?

17 A. I forgot about this e-mail because there's
18 thousands, but, yeah, that's exactly what I'm talking
19 about.

20 Q. Now, scroll down to the bottom which looks like an
21 earlier in the day e-mail where you write, Joseph:
22 Tony, Scott and I are in the middle of our weekly
23 defense team meeting right now. We are discussing
24 amongst many things the interviews of the three
25 witnesses you indicated you may want interviewed by the

1 private investigator. You identify those witnesses are
2 Jenny Duarte, Colette Robichaud and Liz Mizzoni. And
3 you write you're also discussing the pretrial
4 memorandum.

5 Now, you ended up having a defense team meeting
6 that discussed this issue?

7 A. Yeah. I believe when he sent me his e-mail, I
8 think we were in the process of meeting.

9 MR. McADAMS: I'd like to mark Government
10 Exhibit 17. At the bottom it's Bates stamped 473 and
11 474, if there's no objection.

12 MR. OLEN: No objection.

13 THE COURT: 17 will be full.

14 (Government Exhibit 17 admitted in full.)

15 Q. Are these again your notes about a meeting?

16 A. Yes, they are.

17 Q. Now, you have number 2, JAC's request for
18 interviews of certain witnesses and then in parentheses
19 Jenny Duarte, Colette Robichaud and Liz Mizzoni. And
20 underneath each of those names there's an arrow
21 pointing to a circle and two of them say no and one of
22 them says yes. Could you explain what that means?

23 A. I just want to look at the whole note for a
24 second.

25 Those are my notes depicting what we had decided

1 to do, meaning Mr. Traini and Mr. DeMello, in terms of
2 assessing whether or not these witnesses should be
3 interviewed or not at that time.

4 Q. And did you discuss that with Mr. Caramadre?

5 A. Yes.

6 Q. And you informed him -- what was the conversation
7 with Mr. Caramadre?

8 A. I believe it was an in-person meeting that we had.
9 And after we met, it was decided we weren't going to
10 do, I believe, because Liz Mizzoni flipped once or
11 twice, but in the end, I don't know how we got there,
12 I'd have to take a look at notes, but in the end it was
13 decided we weren't going to interview any of these
14 witnesses.

15 Q. In general, do you recall why?

16 A. Let's take Jenny Duarte, for example. Jenny
17 Duarte is the niece of Joseph Caramadre's best friend
18 from high school. In fact, they're still best friends.
19 They still see each other. And Jennie's husband,
20 Donald, was an annuitant and I believe he was a
21 joint -- I think he was an annuitant on two annuities
22 and he was a joint tenant on one of the bonds. And she
23 was interviewed by the FBI. I believe what she did was
24 she refused to be interviewed by Mr. Souza. I think
25 subsequently she agreed to be interviewed by Ms. McDaid

1 and maybe Mr. Souza was there, and I think she also
2 testified at the Grand Jury. And she really didn't
3 have a memory of anyone telling her about an annuity,
4 that her husband agreed to be an annuitant. This is my
5 memory. I'd have to look at the 302s and the Grand
6 Jury testimony.

7 She didn't have any memory of a bond account.
8 She didn't have any knowledge of what an annuity was,
9 about what a bond was. And this was important for me
10 because I believe -- I believe that this is -- I'll
11 call pre-Mr. Radhakrishnan. And why this is important
12 is because Mr. Radhakrishnan was hired I think in June
13 or July of 2007 and his job duties basically rolled
14 into meeting with most of the joint tenants,
15 annuitants, mostly terminally ill people.

16 So what I wanted to see was what is
17 Mr. Caramadre doing beforehand. What's his practice.
18 Because it's clear to me that Mr. Radhakrishnan wasn't
19 fully disclosing to these people. So I wanted to see
20 what's being said to the terminally ill people, the
21 family members pre-Mr. Radhakrishnan.

22 And as I looked at the 302s, again I have to
23 take a look at it, but as I look at the 302s and the
24 Grand Jury testimony, she kept on saying I don't
25 remember, I don't remember, it could have been. You

1 know, I blocked that stuff out. Maybe they did tell me
2 that.

3 And Mr. Maggiacomo met with her and her husband,
4 and Mr. Caramadre might have met with her. And what I
5 thought was problematic was she had no fundamental
6 concept of what an annuity was. She had no fundamental
7 concept of what a bond was. Now, she didn't say that
8 stuff, but that's the stuff she didn't say in her 302
9 report. What she kept on saying was in her 302 report,
10 it was a gift. Joseph told me this was for charity
11 purposes. And that's a problem. Why? Because one of
12 the things, one of the allegations the Government had
13 made in this case, or the evidence showed, is that
14 Mr. Radhakrishnan wasn't disclosing to the terminally
15 ill people the business nature of this transaction.

16 What he was doing was, allegedly, was telling
17 people -- one of the things he would tell people is we
18 are going to open up an annuity, but this is all going
19 to go for charity and the profits of this are going to
20 go strictly to charity and this is where the \$5,000
21 comes from that I'm giving to you. So by you allowing
22 us to open up an account in your name, this enables us
23 to help other people and give other monies. So that
24 all ties in because Duarte is saying to the Government,
25 oh, yeah, this was charity.

1 It seems like after the fact she's saying, well,
2 maybe they said about a bond, maybe they didn't.

3 I did not want an investigator to back out with
4 this witness and lay another record of -- because what
5 I would have had the investigator ask is, do you know
6 what a bond is, do you know what a joint tenant is, do
7 you know what a margin is, do you know what an annuity
8 is, do you know what an annuitant is. I don't believe,
9 based on my review, that she knew any of that stuff.

10 So I had an investigator go out there, and now
11 kind of -- I assume the Government picked up on this,
12 but maybe you didn't -- I'm going to go lay a record of
13 this? What am I going to get out of investigating?
14 We're not going to hire an investigator. We're not
15 going to hire an investigator to send a message to the
16 Government, Hey, guess what, you've got your FBI agent,
17 Cookie McDaid, going out there and Postal Inspector
18 Souza, you know, interviewing people. We're going to
19 do the same thing. This isn't a game. This is the
20 defense of someone's life.

21 So if it had value, we would have done it. To
22 me it didn't have value. And on cross-examination of
23 her, she -- my memory is anyways, and it's not as good
24 as it was back at trial, was she's saying, you know, I
25 could have blocked it out. They might have said

1 something.

2 And the other thing I was going to do at trial
3 with her is Maggiacomo, I believe, Maggiacomo met with
4 Donald Duarte. He visited their home in Scituate. And
5 Jenny Duarte testified that she was in and out of the
6 room so she was there for part of the meeting. I
7 think, and I have to look at his testimony, I think
8 Edward said he didn't explain certain things. But I
9 think he might have said he thought Joseph did and he
10 was just there to sign the documents.

11 So one of the things that I would have done was
12 they don't know whether or not -- what was disclosed to
13 Donald. And if there was a misunderstanding because
14 Mr. Caramadre thought Mr. Maggiacomo was doing it
15 because Mr. Maggiacomo met with him and Mr. Maggiacomo
16 thought he was just getting a signature and he thought
17 Mr. Caramadre would do it, then nothing is intentional.
18 And in fact, Mr. Caramadre's best friends with Jenny
19 Duarte's uncle. And he's not going to go harm Jenny
20 Duarte. He's not going to do anything. In fact, Jenny
21 Duarte had referred over her father-in-law, which is
22 Donald's father, David Duarte, and got money. So there
23 wasn't anything really damaging. But on the flip side,
24 it wasn't very helpful either because what bothered me
25 about Jenny Duarte was she kept saying this was just a

1 gift.

2 This wasn't a gift. There was a quid pro quo.
3 This was let us use your name on these accounts and
4 we'll give you \$5,000. It's not a gift.

5 Q. This transaction with Jenny Duarte was before the
6 ad ever went in the Catholic paper. This was before
7 Mr. Radhakrishnan had been hired. And in fact, this
8 was a transaction in which the owner of the annuity who
9 was named was a very high profile political figure who
10 had never met and had no idea who the Duartes were, and
11 she said she had never heard of that person before,
12 correct?

13 A. That's correct. I'll just say this. I know when
14 she was questioned, you know, the questions were, Do
15 you know who the investor was? Do you know who each of
16 the investors were on these annuities and bonds? Did
17 you know how much money was getting invested? Okay.
18 So I thought that was problematic, but my defense to
19 that would have been does she really need to know who
20 the investor is, does she really know how much money is
21 getting invested. As long as they know, my argument to
22 the jury would have been as long as she knows this is a
23 business transaction, there's an account being opened
24 up, they're getting \$5,000 for the opening of an
25 account in her husband's name and Social Security

1 number, that's okay. That's all they need to know.
2 Like, how far did we need to go? She didn't even know
3 that.

4 Q. But you also would have had to deal with
5 Mr. Maggiacomo's testimony that when called by the
6 insurance company and asked what the relationship was,
7 that Mr. Caramadre instructed him to say that this
8 person was a friend of the Duartes?

9 A. I don't recall that, Mr. McAdams. I thought the
10 friend issue had to do with Lily Ianiero and the
11 attorney, but my memory would have to be refreshed on
12 that point.

13 Q. Just to follow-up on this, then we can take a
14 break, Government Exhibit 18. It's 470 at the bottom.

15 MR. OLEN: No objection.

16 THE COURT: All right. 18 will be full.

17 (Government Exhibit 18 admitted in full.)

18 Q. Just to follow-up, this is another page of your
19 notes, Mr. Lepizzera?

20 A. Yes.

21 Q. At the top it indicates October 10, 2012, so
22 roughly two days after Mr. Caramadre inquired about the
23 investigator?

24 A. Yes.

25 Q. And down at the bottom it's circled and number two

1 says, Investigator use, then an arrow, JAC doesn't want
2 to interview Liz Mizzoni but he wants to interview --
3 and there's names, Monsignor Sheehan, Tom Maltese and
4 Jenny Duarte, and on the next line Colette Robichaud.
5 And then each of them is struck out. Can you explain
6 what that means?

7 A. The striking out means that we discussed each one
8 of those potential interviewees, and it was jointly
9 decided by all after a full discussion that those
10 people would not be interviewed.

11 Q. So you just testified at great length about the
12 back and forth analysis that you had with respect to
13 one particular witness and whether it was a good idea
14 to interview them.

15 Are you essentially telling us that you had a
16 similar conversation with regard to these other
17 potential witnesses with Mr. Caramadre?

18 A. Yes.

19 MR. McADAMS: Your Honor, I think it might be a
20 good time to take a break.

21 THE COURT: I agree.

22 All right. We'll take a break. We're going to
23 take a break until 1:30 so that counsel has sufficient
24 time to look over the documents that I gave you to
25 review, Mr. Gerstein, with Mr. Lepizzera and Mr. Traini

1 to decide whether you're going to agree that those can
2 be turned over or whether I'll just order that and what
3 will happen from there. All right? So I'll give you
4 some time to talk to counsel about that, and so we'll
5 reconvene at 1:30.

6 (Side bar conference off the record.)

7 (Lunch recess.)

8 THE COURT: Mr. McAdams, are you ready to
9 continue?

10 MR. McADAMS: Yes, your Honor.

11 THE COURT: Before you get going, maybe I can
12 ask Mr. Gerstein if he's had a chance to review these
13 documents.

14 MR. GERSTEIN: I have, your Honor. And for the
15 purposes of the record, our response is as follows:
16 These documents are clearly opinion work product, and
17 it remains our position that they are not subject to
18 disclosure absent, at a minimum, a highly persuasive
19 argument necessitating that convinces the Court that
20 they are required to be disclosed. That being said and
21 with reserving all of our rights with the permission of
22 the Court, if the Court orders these documents
23 disclosed, we are certainly not going to file an appeal
24 and we will comply with the order of the Court, but,
25 again, I want the understanding to be clear that we are

1 not waiving the argument with respect to these
2 documents or similar documents being opinion work
3 product that would not be subject to disclosure. So I
4 trust that that adequately responds to the Court's
5 inquiry before we broke.

6 THE COURT: I think it does. And what I'm going
7 to do is -- there are a couple of additional documents
8 that I want to give a look at. I'll probably do that
9 during the break today, that I also want to have you
10 look at. And then -- or I may want to have you look
11 at. And then I think what we'll do is I'll have you
12 all come up to chambers at the end of the hearing today
13 and I'll deal with giving Mr. Olen and Mr. Watt some of
14 these or all of these additional documents, about ten
15 additional pages because, as you all know, based on our
16 earlier chambers conferences, we're not going to finish
17 this examination today so I think we have some time.
18 But what you've just told me is helpful in terms of
19 scheduling for sure. Thank you.

20 MR. GERSTEIN: Do I have a right to pull back
21 what I said scheduling the ten pages?

22 THE COURT: Yes.

23 All right. Mr. McAdams, are you ready to go?

24 MR. McADAMS: Yes, your Honor.

25 THE COURT: Just one moment. Just to expedite

1 everything, Mr. Gerstein, do you want to look these ten
2 pages over now? You should be familiar with these
3 anyway because they're your clients' records, and then
4 just return them to me. I'm not going to be able to
5 look at them while we're -- you can multi-task.

6 THE COURT: Go ahead, Mr. McAdams.

7 MR. McADAMS: Thank you, your Honor.

8 Q. Good afternoon, Mr. Lepizzera.

9 A. Good afternoon, Mr. McAdams.

10 Q. Mr. Lepizzera, I'd like to turn your attention now
11 to the beginning of the trial, which was November 13th,
12 2012.

13 A. Yes.

14 Q. You alluded earlier in your testimony about the
15 decision to reserve defense's opening statement?

16 A. Yes.

17 Q. Could you explain what your thinking was behind
18 that decision.

19 A. It was scheduled to be a three- or four-month
20 trial, and -- I think I alluded to this before, does
21 Mr. Caramadre testify or not. What is
22 Mr. Radhakrishnan going to do in terms of -- he was
23 representing himself. He was pro se. What is he going
24 to do in terms of his trial strategy.

25 So Mr. Traini and I talked about this with the

1 client, and the client agreed with it, it was our
2 decision not to give an opening statement because one
3 of the worst things an attorney can do is, especially
4 with a three- or four-month trial is promise or make
5 statements to a jury in opening statements and it
6 doesn't happen.

7 So it was a thought-out process. It was thought
8 out for a while. This wasn't the first day of trial
9 saying, well, we're going to defer. This is something
10 that was thought out, discussed and discussed with the
11 client. We all agreed that no opening statement would
12 be given. Probably an opening statement would be given
13 if we put on a case.

14 Q. So you decided that you would reserve your opening
15 in case the Defendant ended up putting on its own case
16 at the conclusion of the Government?

17 A. Yes. And whether that included Mr. Caramadre's
18 testifying or other witnesses, correct.

19 Q. And you discussed this with Mr. Caramadre, and he
20 agree with that thinking?

21 A. Yes.

22 Q. Now, with respect to the first day of trial,
23 because you had reserved opening, the way that it
24 proceeded was the Government did its opening and then
25 the videotaped deposition of Mr. Wiley was played; is

1 that correct?

2 A. That's correct.

3 Q. And after Mr. Wiley's direct testimony was played,
4 a cross-examination of Mr. Wiley was played for the
5 jury; is that correct?

6 A. Yes. Both by Mr. Pine on behalf of
7 Mr. Radhakrishnan and Mr. Flanders' cross on behalf of
8 Mr. Caramadre.

9 Q. And you had discussions with Mr. Caramadre before
10 the trial as to whether or not to play those particular
11 cross-examinations?

12 A. Yes.

13 Q. What did Mr. Caramadre want to do?

14 A. There were multiple conversations in terms of
15 playing part of the cross-examination, playing none of
16 the cross-examination, but ultimately on Mr. Wiley,
17 Mr. Caramadre wanted that cross-examination to go
18 ahead. In fact, we did have a disagreement or a
19 divergence of views, I should say, on how much of the
20 cross-examination should come in because, quite
21 frankly, some of what Mr. Wiley said on
22 cross-examination, especially with Mr. Flanders because
23 I couldn't control Mr. Pine's cross-examination, was
24 damaging. And it's been a while since I looked at
25 Mr. Wiley's video deposition. I think I've seen it

1 since the trial when it was played. I think at one
2 point Mr. Flanders might have asked a question, do you
3 think my client did any wrong or harm and Mr. Wiley
4 said yes. I'm paraphrasing but there were some things
5 I wanted out of that cross-examination, references to
6 Agent McDaid, some other references I just don't
7 recall, but I wanted to at least shorten it.

8 Mr. Caramadre didn't. And ultimately, I think the
9 whole cross was played that he wanted.

10 Q. That included the testimony that Special Agent
11 McDaid had made some cookies and brought them to
12 Mr. Wiley?

13 A. That's right. And you just refreshed my memory.
14 It was she brought cookies over to Mr. Wiley. I think
15 she might have brought her son. I don't know how old
16 her son was. She had a younger son. I think she
17 brought her son at some point to go see Mr. Wiley, and
18 I think Mr. Wiley had testified that they sort of
19 developed a friendship and they were talking about
20 boats or something like that. But part of the stuff,
21 and I don't recall, I'd have to look at the video
22 deposition transcript, some of the stuff I just didn't
23 want in because I thought it was damaging, but
24 Mr. Caramadre got his wishes and that part came in.

25 Q. Even though you thought that it might be damaging,

1 ultimately it was Mr. Caramadre's decision and you
2 played that portion of the cross-examination?

3 A. Yes.

4 Q. Now, did you have similar debates with
5 Mr. Caramadre about whether or not the
6 cross-examinations of other video deponents would be
7 played at the trial?

8 A. Yes.

9 Q. Was it a similar sort of back and forth about
10 whether it's a positive portrayal or potentially
11 damaging?

12 A. What comes to immediate mind right now is
13 Mr. Wiley's video deposition. We had made an initial
14 decision, meaning the defense team and Mr. Caramadre,
15 that we were not going to play the cross-examination by
16 Mr. Flanders at all of Mr. Mizzoni because I must have
17 looked at Mr. Mizzoni's deposition four, five, six
18 times, maybe more but at least that. And in my
19 opinion, and I want to preface this, Mr. Flanders did a
20 good job, but as we tried to keep the depositions out,
21 the thing was the indictment hadn't been returned yet,
22 and it was a difficult job to take someone's deposition
23 with no indictment, you don't know the whole case. But
24 be that as it may, I viewed Mr. Flanders deposition or
25 the cross-examination as more of a civil type

1 deposition. How you question a witness -- I handle
2 civil and criminal cases. How you handle a deposition
3 is much different than you handle a cross-examination.
4 In a civil deposition, the goal is to get as much
5 information on the record as you can so you can
6 discover or inquire into the other side's case. What
7 is the witness possibly going to say? Okay? This was
8 a little bit different. This was, although styled as a
9 deposition, was really trial testimony. And some of
10 the questions -- no fault of Mr. Flanders, he's a fine
11 attorney -- came across at times as a deposition
12 because it was a video deposition. And I thought --
13 again, I'm Monday morning quarter-backing on this in
14 terms of a deposition, I thought it came across more as
15 a civil deposition. Some of the questions were
16 open-ended.

17 At some point, again, I'd have to look at the
18 transcript or look at the video, Mr. Mizzoni said
19 something to the effect of, you know, "He stole my
20 body. He stole my body," referring to Mr. Caramadre.
21 In terms of saying I didn't know I was a named
22 annuitant and this is just wrong and he stole my body.
23 That came out, I believe, on cross or at some point.
24 And it was just damaging. I did not want the jury to
25 hear that.

1 So we had made a decision initially not to play
2 any cross-examination. Then -- with the client. Then
3 I had a communication with -- I had I think a
4 face-to-face discussion with Mr. Caramadre. He said
5 that, no, I need that cross-examination to come in
6 because Mizzoni mentioned something about that Pamela
7 McDaid, FBI Agent Pamela McDaid showed Mizzoni a list.
8 And Mr. Mizzoni testified to that, showed him a list
9 with all these names. And Mr. Caramadre's theory of
10 the case was, again, the Government came in, showed the
11 witnesses these lists that Mr. Caramadre was making all
12 this money, and it basically flipped the witnesses. I
13 think he said at some point, "My wife would kill me if
14 I give up that cross. That has to come in."

15 So he changed his mind and said, "I want that
16 cross to come in." I don't believe we ever made a
17 final decision on that because we never reached the
18 bridge. Mr. Mizzoni's deposition was never proffered
19 by the Government.

20 **Q.** Because this was going to be a three- to
21 four-month trial and it ultimately ended after four
22 days of testimony?

23 **A.** Yes. We would have had to cross that bridge when
24 the Government was ready to put that on.

25 **Q.** Was it ever part of your cross-examination

1 strategy to deliberately fail as a cross-examiner so as
2 to increase the pressure on Mr. Caramadre to plead
3 guilty?

4 A. I find the question just morally reprehensible.
5 Absolutely 110 percent not. I wouldn't do it to
6 anyone, and I wouldn't do it to a client who I
7 considered a friend or cared about. Absolutely not.

8 Q. You didn't do it to Mr. Caramadre in this trial?

9 A. No.

10 Q. Now, we just talked about a couple of video
11 depositions, but in this trial there were many
12 different types of witnesses; is that fair to say?

13 A. Yes.

14 Q. At least in what was anticipated to be the full
15 three- to four-month trial. The first week was mostly
16 family members, but over the course of the three- to
17 four-month trial, there was anticipated to be various
18 categories of witnesses?

19 A. I knew the case well. There was going to be --
20 and I think the Government did a good job -- the
21 terminally ill people and their family members. The
22 Government started out with that for a reason, to get
23 everyone's attention, and it came across pretty
24 powerful. Then at some point it would have segued into
25 some of the professional people. It would have segued

1 into maybe partners, Mr. Maggiacomo, Mr. Hanrahan. It
2 would have segued into representatives from the
3 insurance company. It would have segued then into
4 representatives from the broker/dealer houses, in terms
5 of TD Ameritrade, E*TRADE. It would have gotten to
6 other professional witnesses like Mr. Prisko and Lori
7 Albert, what have you.

8 So I viewed the case as these pockets. You have
9 the pockets of the terminally ill people and their
10 family members. You've got the pocket of the
11 professional witnesses from broker/dealer houses, the
12 insurance companies, the bond companies and what have
13 you.

14 Q. And would you structure your cross-examination of
15 those various pockets of witnesses differently
16 depending on who they were? In other words, would you
17 take the same approach of cross-examining a terminally
18 ill person as you would a representative from the
19 insurance company?

20 A. They would be quite different.

21 Q. How so, in brief?

22 A. For the people that were here from -- in November
23 during the four days of actual testimony, the witnesses
24 who were the family members of the terminally ill
25 people, it was powerful. Okay? Some were crying.

1 Mr. Rodriguez was still sick.

2 So your approach in terms of, as I view a
3 defense lawyer, your approach in how to approach
4 cross-examination is different. It doesn't mean you
5 lay down, though. If a witness is out and out lying
6 and they are a terminally ill person and they're lying,
7 you need to confront that witness because that's your
8 job as a defense lawyer.

9 In the witnesses that were presented by the
10 Government, as you can read the transcript, some
11 witnesses were cross-examined and some were not. And
12 that was purposely done because in terms of the ones
13 who were lightly cross-examined or not cross-examined,
14 and I'd have to go back and go through each of the
15 witnesses, Mr. Caramadre, as part of our defenses,
16 Mr. Caramadre didn't deal with most of those witnesses.
17 It was Mr. Radhakrishnan.

18 So I alluded to before about pointing the finger
19 at Mr. Radhakrishnan. I'm not sure exactly how strong
20 that would have been but my thought in this case was to
21 slowly but surely for this jury to distance
22 Mr. Caramadre from Mr. Radhakrishnan. And to the
23 extent I could get something favorable that I saw from
24 a witness, from the family member, or terminally ill
25 person, I'd get it. For example, I think his name is

1 Mr. Fitzpatrick or Carol Larivee. Okay? Carol Larivee
2 was a powerful witness for the Government. I thought I
3 saw an opportunity, and I think she testified on
4 Friday, I thought this was a golden opportunity to kind
5 of flip this on the Government because the Government
6 presented her as she basically threw Mr. Radhakrishnan,
7 and Mr. Craddock who accompanied Mr. Radhakrishnan, out
8 of the house because she was absolutely appalled that
9 you're going to open up an account with my niece?
10 You're going to make money? Get out of my house right
11 now.

12 What I was able to establish with her, okay,
13 slowly but surely and if this developed it would have
14 worked, at least would have had a nice argument, was
15 this: Boy, Mr. Radhakrishnan and Mr. Caramadre aren't
16 explaining things to people? Of course they were
17 explaining things to people. They told Mrs. Larivee at
18 least that there was an account being opened up, that
19 they needed her niece's Social Security number, that
20 they needed to open up an account because investors
21 were going to put money in this account and that part
22 of it was this death benefit. Okay?

23 Now, she found that offensive and threw them
24 out. But the way I looked at it on behalf of the
25 Defendant was thank you very much, Government, because

1 Mr. Radhakrishnan is explaining stuff to the people.
2 And in fact, let me go a step further. Part of the
3 defense was that Mr. Caramadre actually asked
4 Mr. Craddock, who was a lawyer in his office, who was a
5 former chief of police in Cranston, former colonel, he
6 actually asked Mr. Craddock to accompany that meeting,
7 go with Mr. Radhakrishnan to go meet with Carol Larivee
8 just to make sure that things were getting disclosed
9 and stuff.

10 So I took that opportunity, no one realizes it
11 because no one knows what my defense strategy was, but
12 Mr. Craddock went to that meeting with
13 Mr. Radhakrishnan and he went there and it got
14 explained to Carol Larivee and she didn't like it and
15 she threw them out.

16 Q. So what you did there, what you just explained
17 there was a strategic cross-examination that you were
18 sort of banking for later in the case when you could
19 argue that point to the jury, hopefully with some other
20 instances where it's similar; is that fair to say?

21 A. That's right. Because to me, part of my theory
22 was, what I would argue to the jury ultimately and who
23 knows, because three or four months is a long trial.
24 But the way I looked at this is it makes no sense
25 whatsoever. Is Mr. Caramadre asking Mr. Radhakrishnan

1 to go lie on Mondays, Wednesdays and Fridays, and then
2 tell the truth on Tuesdays and Thursdays? It makes no
3 sense. Mr. Radhakrishnan was telling the truth and
4 he's lying sometimes. Well, it makes no sense that
5 Mr. Caramadre was directing him to do that. So what I
6 would argue was that Mr. Radhakrishnan was doing this
7 on his own.

8 Q. Of course, on rebuttal we would have pointed out
9 that after that Mr. Caramadre stopped sending
10 Mr. Craddock or anyone else with Mr. Radhakrishnan, but
11 that's neither here nor there.

12 A. I understand.

13 Q. Did you use that same cross-examination with
14 respect to every witness?

15 A. Can you repeat that?

16 Q. Would you use that same technique that you just
17 described with Mrs. Larivee with, for example,
18 Mr. Rodriguez?

19 A. Yes. I had the opportunity to see Mr. Rodriguez's
20 video deposition, which I viewed him as credible versus
21 a Mr. Garvey, who I thought was kind of, you know, not
22 so credible, I'll say.

23 It was clear to me, okay, that Mr. Caramadre
24 never met with Mr. Rodriguez. Okay? In fact, I think
25 with him what I pointed out was is that Raymour didn't

1 explain some of the documents to Mr. Rodriguez. And I
2 don't know if the Government ever picked up on this
3 because everyone is probably wondering what is
4 Mr. Lepizzera doing. I think on the bond contract, and
5 I forget what it's called, an acknowledgment contract,
6 is on there it said if Mr. Rodriguez dies, the money
7 goes to Mr. Caramadre although there's no reference on
8 the document when he signed it that Mr. Caramadre is
9 the investor. But if by signing the document there's
10 going to be an account opened up; and if Mr. Rodriguez
11 dies, then all the money as a joint tenant goes to
12 Mr. Caramadre. However, what I had pointed out as a
13 flip side was doesn't this contract also say that if
14 Mr. Caramadre dies, that all the money goes to
15 Mr. Rodriguez.

16 Now, I think he testified that no one explained
17 that to him. One of the arguments that I was
18 developing, and I don't think anyone really caught on,
19 was Mr. Caramadre paid a lot of money for that contract
20 to get drafted and he's putting in the contract, he's
21 putting in the contract that if Joint Tenant B dies,
22 the terminally ill person, I get the money; but if I
23 die, then the joint tenant gets the money.

24 Now, there's some holes in that, but that's what
25 I saw as an opportunity with him. Other than that, I

1 really didn't see any other reason to go any further
2 with him.

3 Q. With each witness you'd look at that witness and
4 you have knowledge of their previous statements because
5 they've been disclosed to you, and you developed a
6 strategy consistent with your overall theory on how
7 you're going to cross-examine that witness?

8 A. Yes.

9 Q. And did you do that with each of the witnesses
10 that testified during that first week of trial?

11 A. Yes.

12 Q. Not to repeat an offensive question, but did you
13 ever intentionally not cross or intentionally structure
14 your cross-examination so that its effect would be to
15 pressure Mr. Caramadre to plead guilty?

16 A. Absolutely not.

17 Q. To your knowledge, did Mr. Traini ever do that or
18 suggest that you do that in your cross-examinations?

19 A. Absolutely not.

20 Q. Now, we talked about the first day of trial. And
21 if I'm correct the second day of trial, we completed
22 the Wiley deposition and then Mr. Rodriguez testified.

23 A. I believe that's the order.

24 Q. And I don't recall whether anyone else testified
25 the second day or not, but when was the first time that

1 Mr. -- strike that. Let me rephrase that.

2 Before the trial started you had a conversation,
3 yourself and Mr. Traini with Mr. Caramadre regarding
4 your obligations to disclose to him any potential plea
5 offers from the Government.

6 A. Absolutely.

7 Q. And you actually sat with him and explained the
8 potential sentencing consequences if you're convicted
9 of each of the particular charges in the indictment?

10 A. Yeah. There's a letter to that effect that we
11 actually went through in addition to the oral
12 communications.

13 Q. So on December 13th, I believe it was, you had a
14 letter signed by Mr. Caramadre that memorialized those
15 conversations?

16 A. I think, Mr. McAdams, the letter is dated
17 September 13th. I think he may have signed it on the
18 18th, but he signed it in September. I think there's a
19 note to that effect to memorialize the exact date. I
20 don't think he signed it on the 13th. I'd have to look
21 at my notes.

22 Q. I think you're right. I have a note of that. But
23 that's not my question. My question is in the context
24 of that conversation and that letter being signed by
25 Mr. Caramadre, did he instruct you not to negotiate,

1 attempt to negotiate a plea agreement with the
2 Government?

3 A. He instructed us by signing that not to open up
4 plea negotiations -- no plea negotiations. Just march
5 ahead.

6 Q. And you did that?

7 A. Yes.

8 Q. You prepared for trial and prepared for all your
9 various witnesses and so forth?

10 A. Just so we're clear, we were preparing for trial
11 beforehand. So it was just continuing on with the
12 trial preparations.

13 Q. So now I'm going to kind of fast-forward. We're
14 back at the time of the actual trial. When was the
15 first time during the course of that trial the topic of
16 opening up a plea negotiation with the Government came?

17 A. I'm a little fuzzy on the exact date. I believe
18 after Day 2, I believe that we had a meeting, meaning
19 with Mr. Traini and Mr. Caramadre, after Day 2. In
20 other words, in the afternoon because we were going I
21 think until 1:30 trial testimony.

22 I think we had a meeting on Wednesday, but I
23 could stand to be corrected. I know we had a meeting
24 and then we were talking about the way the trial was
25 developing, the powerful nature of the witnesses, and I

1 think we felt we were obligated to sit down with the
2 client and have a heart-to-heart conversation saying I
3 know we had these discussions last time in September,
4 but this is not going well, and we are obligated to
5 advise you that maybe we should try to open up
6 negotiations.

7 He left that day saying that he would think
8 about it. Again, I think it's Wednesday, but I'm not
9 one hundred percent sure. And I said that's fine.
10 Just think about it. Talk to your family about it.
11 It's a family decision. And I believe he came back
12 Thursday morning and I believe he instructed me to open
13 up the negotiations, which we did.

14 Q. We're going to get into those negotiations.
15 Before that, I just want to kind of cover something we
16 skipped over on Tuesday, the first day of the trial,
17 Mr. Wiley's deposition.

18 After Mr. Wiley's testimony, that night did you
19 have conversations with Mr. Caramadre or his wife
20 regarding how that testimony went, Paula Caramadre?

21 MR. WATT: Regarding, I'm sorry?

22 Q. Regarding the Wiley testimony.

23 A. I believe that after trial ended on Tuesday, I
24 believe that Mrs. Caramadre -- she was sitting behind
25 the defense table in the public gallery, and she kind

1 of came towards the bar. And I don't remember her
2 exact words, okay, but she looked confused, concerned,
3 and she said something to the effect of, you know,
4 "What's going on with all this?" Something to that
5 effect. Those may not be her exact words, but she was
6 frazzled by the evidence.

7 Q. And part of that evidence that had been played in
8 the Wiley deposition was a notarized signature page
9 that notarized both Mrs. Caramadre's signature and
10 Mr. Wiley's signature, correct?

11 A. Right. Give me one second. There's so many
12 transactions.

13 Q. From the TradeKing application?

14 A. Yeah. On the application in dispute or the bond
15 account in dispute, I should say, was Richard Wiley was
16 the joint tenant with Paula Caramadre, and I believe
17 exhibits came in during the video deposition having
18 Paula Caramadre's name on it.

19 Q. Was Mrs. Caramadre upset about the fact that it
20 was not her signature, her true signature that had been
21 notarized in place of her name?

22 A. I can't tell you what she was thinking because she
23 didn't say anything about signature, okay? So I can't
24 say that. What I can tell you is that she looked
25 distraught, frazzled, and she came up to the bar and I

1 said something to the effect of, Remember what I told
2 you Sunday night at your house, trials are a roller
3 coaster. They're up and down. And right now we're in
4 the Government's case-in-chief and there's going to be
5 a lot of down, a lot of down for the defense. If we're
6 going down this road at trial, we need to hold strong
7 and let's deal with it. Something to that effect.

8 Q. Now, let's go back to I believe you said it was
9 Thursday morning Mr. Caramadre instructed you to open
10 plea negotiations with the Government.

11 A. Correct.

12 Q. What were your observations of his mental state at
13 that time?

14 A. He was fine.

15 Q. I mean, you have known him for many years; is that
16 fair to say?

17 A. I've known Joe for 20 years, but we started
18 talking again probably a couple of years ago, I think
19 during the course of the start of this investigation.
20 He was down because, let's face it, he's on trial for
21 his life and the evidence was pretty powerful. So he
22 was down, but he was coherent. He understood what he
23 was doing. There was no doubt in my mind that he knew
24 what he was doing. In fact, when he came back Thursday
25 and said, I'm authorizing you and Tony to open up the

1 negotiations, I actually said to myself something to
2 the effect of he's finally making a good decision. I
3 didn't know what was going to come of the negotiations.
4 I didn't know if the Government was going to say
5 absolutely not, we want 20 years. Which it didn't
6 happen. It didn't happen, but I didn't know what the
7 Government was going to do. But I thought that it was
8 a very rational, prudent decision to say open up the
9 plea negotiations.

10 So he was fine. He understood what was going
11 on.

12 Q. Even though you know that he had had a history of
13 depression over the years, and you've had many, many
14 experiences with him during the course of this
15 representation and the days of trial, you had no
16 concerns that he might be mentally incompetent to make
17 that type of decision?

18 A. None. None.

19 Q. Did he say anything to you to indicate that he was
20 incapable of making a decision or anything of that
21 nature?

22 A. No.

23 Q. Now, during the course of the trial as we had
24 progressed through the first two days, had he been
25 able to assist you in trying the case in the sense of

1 engaging with you regarding how witnesses were
2 testifying, having questions, passing notes, things of
3 that nature that would help, you know, as the trial
4 went on?

5 A. He was kind of quiet because Joe's an active --
6 he's a very bright man. He's intelligent. He's
7 hands-on. He was kind of quiet. I do recall he was
8 paying attention. I recall at one point he did during
9 the Edwin Rodriguez testimony, when I came back, he
10 wanted me to ask another question of Mr. Rodriguez.
11 And the question I think he wanted me to ask is:
12 Mr. Rodriguez, isn't it true that Mr. Caramadre lost
13 \$105,000 in this particular bond account? Okay? I
14 don't know the exact number. I'm kind of just picking
15 a number. And my response to him was, Well, why am I
16 going to ask that question. Number one, he denies
17 knowing about a bond account. Number two, he doesn't
18 know about whether you lost money or you gained money.
19 Number three -- I believe he did lose money in that
20 account. Number three, the Government is going to come
21 back in the case-in-chief and say, well, the reason why
22 you lost money is because Mr. Rodriguez didn't die
23 right away and that, therefore, it wasn't prudent to
24 keep the investment; therefore, you sold the bond short
25 because there was no death benefit to be gained because

1 Mr. Rodriguez didn't die.

2 And number four, if I asked that question, all
3 it's going to do is confirm that this man doesn't know
4 anything about a bond account. So lack of foundation.
5 He has no knowledge. And I'm not going to help the
6 Government confirm the case, which is what bond
7 account? What are you talking about? How would I know
8 about losses or gains if I don't know anything about
9 it? So I remember that dialogue. He was there. He
10 understood what was going on.

11 Q. Now, with respect to the plea negotiations, that
12 was a process that spanned over several days, correct?

13 A. Probably Thursday through Sunday night.

14 MR. McADAMS: I'd like to mark Government
15 Exhibit number 19, which is an e-mail communication,
16 Bates stamped page 330, 331.

17 THE COURT: Any objection?

18 MR. OLEN: I want to take a quick look, Judge.

19 MR. McADAMS: E-mail from -- it's to the
20 Government from you, Mr. Lepizzera.

21 MR. OLEN: No objection.

22 THE COURT: 19 will be full.

23 (Government Exhibit 19 admitted in full.)

24 Q. It's a reply, actually, from Mr. Thompson. Once
25 the Government and yourself and Mr. Caramadre and

1 Mr. Radhakrishnan decided to have some plea
2 negotiations, Mr. Radhakrishnan, who had been
3 representing himself, asked Mr. Thompson to step back
4 in; is that fair to say?

5 A. Yes.

6 Q. So he was serving in the capacity as
7 Mr. Radhakrishnan's attorney for purposes of the plea
8 negotiations?

9 A. Yes.

10 Q. So this is an e-mail reply from Mr. Thompson to
11 you saying thanks, but it includes a previous e-mail
12 that you sent on November 15th, Thursday night, at 9:14
13 p.m. to myself and Mr. Vilker. Can you just review
14 this e-mail quickly.

15 A. Can I just see the top of this page, Mr. McAdams,
16 please? Okay.

17 Now I just want to read what I wrote.

18 (Pause.)

19 Okay.

20 Q. Is it fair to say that the first salvo, so to
21 speak, in the plea negotiations was this proposal by
22 you on behalf of Mr. Caramadre?

23 A. I believe so. I know that -- I believe so. I
24 know that at some point there was discussions about a
25 floor of two and a ceiling of five, and I don't know if

1 that came after this.

2 Q. Okay.

3 A. I don't remember.

4 Q. It's possible there were verbal conversations that
5 were independent of this particular e-mail?

6 A. Yes. What date is this, please?

7 Q. This is November 15th, Thursday night.

8 A. That's Thursday. I believe when the client came
9 to me Thursday morning and said let's open up plea
10 negotiations, one of the things I said to him was,
11 That's fine, but we're in the middle of the trial and
12 the Court is not going to take a time out. We've got
13 to keep on marching forward, which we did. And I know
14 that there were some discussions on Thursday. I
15 believe Mr. Traini handled most of the communications
16 with you and Mr. Vilker so that's why I'm a little
17 uncertain about when the two to five came about in
18 terms of this e-mail.

19 Q. So there were some conversations between
20 Mr. Traini and the Government regarding -- where there
21 was potentially another version of the initial offer
22 where there might be a two-year mandatory minimum with
23 a higher ceiling perhaps; is that fair to say?

24 A. When you say "mandatory minimum," we never
25 discussed pleading to an aggravated identity theft

1 count, which would have been a two-year mandatory
2 minimum. What we talked about was the Government
3 agreeing not to ask for more than five; the Defendant
4 agreeing not to ask for less than two. But obviously
5 Judge Smith was free to, if he wanted to, to go zero
6 months or six months or eighteen months, but the two to
7 five were the parameters and what the Government and
8 the defense would be asking for.

9 Q. That was the potential that was being floated
10 among the parties in the early stages of the
11 discussions?

12 A. It was a potential and I thought had ripened into
13 something the Government -- my memory is the Government
14 threw that out there, meaning it was strongly
15 considering that but that got rejected by the defense.

16 Q. So you had conversations with -- how did it get
17 rejected by the defense?

18 A. Well, let me say this. It got rejected by
19 Mr. Caramadre.

20 Q. What reasons did he give you for rejecting that
21 particular variation of the potential plea?

22 A. Mr. Traini and I thought that was a very favorable
23 resolution because we did not believe that even though
24 we ultimately got to zero to ten, we didn't believe and
25 we have to be honest with the client that that's fine,

1 we get to argue for zero and the Government is going to
2 be arguing for ten, but it's not likely in a case of
3 this nature the Court is going to impose no jail
4 sentence.

5 So we recommended that the two to five was the
6 way to go because basically we were -- we thought the
7 Court would impose at least a two-year sentence so
8 we're really not giving up anything. And with the
9 Government agreeing not to ask more than five, I
10 thought that was a home run because now we've basically
11 capped what you can ask for. Again, it's subject to
12 the Court's discretion because the Court can give a
13 sentence of seven. But based on Mr. Traini's
14 experience and my experience, we thought that with the
15 Government asking only for five that that would not be
16 dispositive on the Court because, as we know these are
17 non-binding plea agreements except the agreement that
18 we entered into, but that it holds a lot of weight with
19 the Court.

20 Q. You thought that that particular potential plea
21 agreement was in Mr. Caramadre's best interest, and you
22 advised him that would be a good position to take?

23 A. That's what we advised him.

24 Q. He rejected that offer?

25 A. He rejected it because he wanted to argue for

1 zero. Which is fine. Admittedly, if we're agreeing to
2 a two-year floor, then we can't breach the plea
3 agreement. We can't ask for zero or six months. But
4 again, in my eyes, I shouldn't say no way, but it was
5 very likely that the Court was going to impose some
6 kind of jail sentence, and I thought the upside of
7 capping the Government to at least a recommendation,
8 not the sentence but the recommendation of five, was a
9 home run. And he absolutely said, I want to argue for
10 zero. I want to argue for zero. Because he didn't see
11 jail as a strong possibility.

12 **Q.** He didn't really think he would get a prison
13 sentence, and he didn't want to give one away in the
14 context of a plea negotiation?

15 **A.** That's right. When Mr. Traini and I went over the
16 sentencing letter dated September 13th, which I think
17 we went over on September 18th, 2012, it has a
18 guideline range. Again, I'd have to take a look at the
19 letter, level 53 or level 51. It's life without
20 parole. Now, as we know with the Supreme Court
21 pronouncements a few years ago, the guidelines aren't
22 binding anymore. They're not mandatory, but they're a
23 guide post. So the Court uses it as a guide post. And
24 I think he thought that this whole level 53 or level 51
25 didn't mean anything. In fact, he made a comment

1 during our discussions about the letter saying what's
2 Judge Smith going to give me after trial, six months, a
3 year, eighteen months, two years at the most? And I
4 said, Are you talking about after trial? He said,
5 Yeah, what's he going to give me, two years after trial
6 if I'm convicted? And I said, Well, if that's your
7 belief, you're quite mistaken, because those ranges
8 might not even be available with the plea, never mind
9 having a four-month trial and dragging all these people
10 in and him possibly testifying and the jury
11 disbelieving him. So that was his state of mind, at
12 least expressed to me.

13 Q. But when you had this conversation with him about
14 the plea agreement, he understood what the potential
15 terms were that were being bandied about, so to speak,
16 and he was actually engaged with you and Mr. Traini in
17 terms of trying to impose his -- what he felt was the
18 best outcome for him?

19 A. Just so I'm clear, he understood what the law was,
20 the statutes, the guidelines. He just didn't believe
21 the Court would impose that kind of sentence.

22 Q. He essentially just didn't think the Court would
23 actually follow through and do that?

24 A. No, he didn't.

25 Q. So he viewed it almost as having nothing to lose

1 in that sense?

2 A. I don't know if I agree with that. His thought
3 was he's not your typical defendant that comes before
4 this court, which we obviously if we ever got to
5 sentencing we would have argued because I believe that.
6 He's done a lot of good. It's more than just giving
7 away money. He's served on boards. He's done a lot of
8 good. And what started out as maybe a loophole in
9 1995, because that would have been the other evidence,
10 maybe developed and morphed into something else. The
11 picture would have been, he thought, he's not your
12 typical defendant that comes before this Court doing
13 bank robberies, murders, selling drugs. He's a
14 different kind of defendant, which deserves a different
15 kind of sentence.

16 Q. But you knew from your experience and advised him
17 from your experience and Mr. Traini's experience, that
18 nonetheless fraud defendants still face significant
19 potential punishment and the Court may very well impose
20 a significant prison sentence?

21 A. That would be the argument on behalf of the
22 Defendant. This was a 15-year scheme to defraud. This
23 was, you know, the Government claims, 44 or \$45
24 million. We would disagree with some of the -- on the
25 bond losses with your expert, Kalotay, who I didn't

1 really think was an expert; but be that as it may, this
2 was a significant case and this wasn't a \$200,000 loss
3 or investment under the guidelines. It was a
4 significant amount of money. It lasted a lot of time.
5 A lot of insurance companies took losses. Some of the
6 bond issuers, I disagree with whether there were losses
7 or not, but it's a significant case that would have
8 called for a jail sentence, in my opinion.

9 Q. That's what you advised Mr. Caramadre?

10 A. Yes.

11 Q. Did you pressure him that he needed to plead
12 guilty?

13 A. No.

14 Q. This particular exhibit, which we've just been
15 looking at is Government Exhibit 19, and this
16 communicated to the Government essentially that
17 Mr. Caramadre was prepared to enter a plea to
18 conspiracy to commit identity fraud if the Government
19 were to recommend up to a five-year maximum and the
20 Defendant was free to argue for less than jail; is that
21 right?

22 A. Yes.

23 Q. You communicated that -- you had a conversation
24 with Mr. Caramadre about that offer?

25 A. I would not have, especially with this type of

1 case and Mr. Caramadre maintaining -- you know, wanting
2 a trial, I would never have sent this out. We had a
3 conversation about this authorizing this.

4 Q. So at some point, whether it was on the day of the
5 15th or earlier than that, he agreed to let you make
6 that offer to the Government?

7 A. Yes.

8 Q. Now, the Government rejected that offer; is that
9 correct?

10 A. It did.

11 Q. And came back with a different offer?

12 A. I recall pulling up to the courthouse, getting
13 dropped off Friday morning. There was an e-mail, I
14 believe, from Mr. Vilker, and I have not looked at this
15 e-mail in a very long time but something to the effect
16 of your offer of last night is rejected, and making a
17 counteroffer. I think he also said in the e-mail, if
18 my memory is good, that please pass this on to your
19 client so we know your client is aware of it.
20 Something to that effect. Because you're obligated,
21 obviously, to tell your client, which we did.

22 Q. Just as Mr. Vilker and I are not authorized to
23 bind the United States without approval from our
24 superiors, you can't bind Mr. Caramadre without his
25 approval?

1 A. That's right.

2 Q. Now, there was a counteroffer from Mr. Vilker,
3 which essentially the terms of which were what ended up
4 being the basics of the plea agreement or no?

5 A. To be honest with you, Mr. McAdams, I would have
6 to see Mr. Vilker's e-mail. I don't have a vivid
7 memory of the e-mail. I know that I received it just
8 as I was pulling up on my iPhone. I just don't recall
9 the exact terms.

10 Q. I don't have that particular e-mail so I'm not
11 going to ask you about that. But is it fair to say
12 that the plea negotiations stretched out over the
13 course of that weekend, the 16th through the 17th and
14 18th?

15 A. Yes. I know that -- I think I sent an e-mail out
16 Friday night saying that the Defendant would plea,
17 would agree to enter a plea to certain terms. I think
18 it wound up being the zero to ten, and then I think
19 that developed into a drafting of the initial plea
20 agreement Saturday morning.

21 Q. And I e-mailed you copies of the draft plea
22 agreements, and you then made some changes over the
23 course of the day?

24 A. Yes.

25 Q. And e-mailed them back to myself and Mr. Vilker?

1 A. Yes.

2 Q. Then on Saturday evening -- let me ask you this.

3 What conversations, if any, did you have with
4 Mr. Caramadre throughout that period of Friday and
5 Saturday regarding what the terms of the plea agreement
6 might be?

7 A. I spoke to him Friday night before sending --
8 again, I'd have to look at the e-mails, but I'm certain
9 I had a conversation with him before sending the e-mail
10 to Mr. Vilker. This could be wrong, 9:47 p.m. It was
11 something late, authorizing me to say, yes, we're
12 willing to agree to these terms, we're agreeing to
13 these terms.

14 The first thing that came out, I think, was a
15 draft plea agreement, and then later on came out a
16 statement of facts. I believe that I had a
17 conversation, at least a conversation with
18 Mr. Caramadre. I don't believe I met with him in
19 person, but I believe I had a conversation with him to
20 let him know what's going on. And at some point when
21 everything was final, meaning the plea agreement was
22 final and the statement of facts, that at least I
23 and/or Mr. Traini would sit down and talk to him before
24 the weekend was over.

25 Q. Because in order to enter into a plea agreement,

1 there would need to be a factual basis to support that
2 plea agreement; is that correct?

3 A. Absolutely.

4 Q. And the Government was insisting that
5 Mr. Caramadre and Mr. Radhakrishnan admit the facts
6 that underlie that plea?

7 A. Just like any other plea.

8 Q. Are you familiar with the term called Alford plea?

9 A. I am.

10 Q. What's your basic understanding of what that is?

11 A. An Alford plea is basically it emanates from a
12 very old case, 1800's or 1900's, but the essence of it
13 is, is that a defendant is charged with -- it might
14 have been murder in that particular case. He's charged
15 with murder, and what the defendant does in an Alford
16 plea says I'm not admitting a committed the murder, but
17 what I'm willing to agree to is that there are
18 sufficient facts necessary that exist -- sufficient
19 facts that exist that if this case proceeds to trial
20 that the Government can convict me. And I think in the
21 Alford case, and it's been literally years and years,
22 maybe dating back to law school, or early on in my
23 career, that I don't know if that particular defendant
24 was facing the death penalty or not and basically to
25 save his life he was willing to say I agree that a

1 murder conviction is going to enter against me and that
2 there are sufficient facts, but I'm not agreeing that I
3 committed the murder. So basically it's a way of
4 letting the conviction go forward without saying that I
5 did it.

6 Q. And I'd like to show you Government Exhibit 20,
7 which is an e-mail, if there's no objection.

8 THE COURT: Any objection?

9 MR. OLEN: No.

10 THE COURT: Government 20 will be full.

11 (Government Exhibit 20 admitted in full.)

12 Q. Do you recall receiving this e-mail from
13 Mr. Caramadre?

14 A. Yes.

15 Q. It says: Mike, what about an Alford plea; this
16 would eliminate me needing to lie. I don't need an
17 answer tonight. Regards, Joe.

18 A. Yes.

19 Q. So Mr. Caramadre, in the course of the plea
20 negotiations that were going on, after he had
21 authorized you to have him plead guilty, sent this
22 e-mail inquiring about an Alford plea?

23 A. Yes.

24 Q. What was your response to that e-mail?

25 A. I don't think I spoke to him that night.

1 Q. Let me show you Government Exhibit number 21. Did
2 you forward that e-mail to Mr. Traini?

3 A. I believe so.

4 MR. OLEN: No objection.

5 THE COURT: Government 21 then is full.

6 (Government Exhibit 21 admitted in full.)

7 Q. Is this Mr. Traini's response when you told him
8 about the Alford plea?

9 A. Yes.

10 Q. He writes: Obviously an Alford plea is out of the
11 question. If he thinks he has to lie to plead, then we
12 are not going anywhere. I don't think we can let him
13 even go that way. Maybe you want to tell him tonight
14 it is absolutely out. In fact, I raised this with Lee
15 Thursday or Friday. It was already rejected at the
16 management level. Your call.

17 Do you recall receiving that message?

18 A. Yes. It actually refreshes my memory. Mr. Traini
19 will have to fill this in, because I don't think I was
20 the one that had -- I'm positive I'm not the one that
21 had the discussions with the Government, that I think
22 that Mr. Traini had a discussion with the Government
23 about a potential Alford plea. It was out of the
24 question, but the client did raise it during the week,
25 either Thursday or Friday. Maybe it was Thursday. And

1 as the client asked, I told Mr. Traini we have to ask.
2 And Mr. Traini asked, and my understanding is it was
3 shot down. Just shot down. It's not a possibility.

4 Q. United States Government policy is that the
5 Government cannot enter into a plea agreement; is that
6 your understanding?

7 A. I've been practicing in this Court almost about 20
8 years. I was on the court-appointed list for many,
9 many years. I've never seen an Alford plea in the
10 Federal Court. I'm not saying it's unheard of, but
11 I've never seen it; and I've seen it very limited in
12 the state court because it's got to be a special case
13 because it cuts against acceptance of responsibility.
14 It's an unusual ask, but we made the ask and it was
15 rejected.

16 Q. And now, did you have -- is it fair to say that
17 during the course of these plea negotiations that
18 yourself and Mr. Traini were working together to try to
19 find a way to come up with, on Mr. Caramadre's behalf,
20 a plea agreement that would be acceptable to him and to
21 the Government?

22 A. Yes. That's what -- it's a contract so that's
23 needing two parties to agree.

24 Q. So if the Government says no Alford plea, it's not
25 going to happen, then it's simply not going to happen?

1 A. Contract takes two; and if one party says no, it's
2 not going to happen.

3 Q. Now, in an attempt to address Mr. Caramadre's
4 concerns, did you take any steps to talk to him --
5 first of all, about this statement "That would
6 alleviate the need for me to lie," what if anything did
7 you say to Mr. Caramadre about that?

8 A. I recall having a conversation with him that there
9 needs to be a factual basis for a plea, for any plea.
10 Not just in Mr. Caramadre's case -- I said in your
11 case, but in any case because the whole essence of a
12 plea is that you're agreeing to plead to these
13 particular counts and it can't just be a naked plea.
14 It can't just be, well, I'll plead to Count 9 and Count
15 33, but I'm not agreeing to the underlying facts and
16 I'm going to walk out of Court and that's it. There
17 needs to be an admission to the facts.

18 I had a conversation with him about what happens
19 at a change of plea hearing where the Government is
20 given an opportunity to give the Court the basis for
21 the plea and what the Government would be ready to
22 prove at trial had this case proceeded on with trial.
23 And we need some facts. And one of the things that we
24 negotiated back and forth was we need to know what the
25 Government was going to tell Judge Smith at any

1 potential change of plea hearing what's the factual
2 basis. And that's what we worked on back and forth.

3 Q. In your knowledge of the case, in your review of
4 discovery, conversations with Mr. Caramadre, did you
5 believe that facts existed that could support a guilty
6 plea?

7 A. Yes.

8 Q. I want to show you Government Exhibit Number 22.

9 THE COURT: Any objection?

10 MR. OLEN: No objection.

11 THE COURT: 22 will be full.

12 (Government Exhibit 22 admitted in full.)

13 Q. This is an e-mail between yourself and Mr. Traini,
14 the top half looks like Mr. Traini's response, the
15 bottom half is yours. This is in reply to Mr. Traini's
16 e-mail that I showed you a moment ago saying the Alford
17 plea is out of the question.

18 And I'm just focusing your attention here where
19 you're writing: Tony, we can discuss later but we
20 don't have to call it an Alford plea. Why can't he
21 admit lying to TD and LifeMark and in the statement of
22 facts he states that he knew there were sufficient
23 facts to establish that he knew that RR, Raymour
24 Radhakrishnan, was going out lying to people and not
25 taking appropriate steps to explain the program to

1 people, but he denies that he knew them back when RR
2 was actually meeting with these people.

3 Is this, first of all, did you have reason to
4 believe that Mr. Caramadre could admit to lying to TD?

5 A. Yes.

6 Q. Where did that come from?

7 A. I think the first -- and I'd have to take a look
8 at documents. I believe the first bond account with TD
9 was opened up in late 2007, either November or
10 December. In February -- in January, a few more were
11 opened up. TD Ameritrade at some point said -- and
12 there might have been five, six, seven. There were a
13 number of bond accounts opened up where Mr. Caramadre
14 was the joint tenant with -- so it's Mr. Caramadre and
15 it's a stranger. Okay? And TD Ameritrade is looking
16 at these accounts saying how come Mr. Caramadre has
17 seven accounts opened up. I'm just using that number.
18 I don't know the exact number. So it's Mr. Caramadre
19 and Person A, Mr. Caramadre and Person B, Mr. Caramadre
20 and Person C, and so on.

21 So at some point TD said, What's going on? Why
22 is this person opening up all these accounts?

23 I believe that Mr. Caramadre had conversations
24 with William Applegate, who worked at TD Ameritrade,
25 and he might have also had conversations with Logan

1 Anderson in February. I think Mr. Applegate's
2 face-to-face meeting with Mr. Caramadre happened in
3 March 2008, and I think Logan Anderson might have had
4 phone conversation with Mr. Caramadre in February of
5 2008. And basically, they wanted to know why are all
6 these accounts being opened up. Like, what is this?

7 And I think Mr. Caramadre, and this is one of
8 the reasons why I didn't want him to testify, I think
9 Mr. Caramadre told him something to the effect of,
10 Well, I'm an estate planner and I'm on this account in
11 my capacity as an attorney for my client, who is the
12 other joint tenant; and basically, I'm doing estate
13 planning for them.

14 And he might have mentioned buying bonds and
15 having death benefit in those bonds. But in any event,
16 this was part of their estate planning and not to worry
17 because I think there was a question that came up and
18 said, Well, if these people die, then the money is
19 going to go to you because this is a joint account.
20 How are you going to get the money to the other joint
21 tenants? We got concerns about that. And he basically
22 said we have a succession plan, the money will get to
23 the clients, not to worry about it.

24 He also might have said that some of the money
25 was his but that most of it was his clients. So TD

1 accepted that answer, I believe. I think that's what
2 the evidence shows. And they let him continue opening
3 up accounts.

4 So my thing was the lie to TD Ameritrade is and
5 my rub with Mr. Caramadre was when you get on the stand
6 and you're going to tell the jury that I read contracts
7 for a living and this is all legitimate, the problem is
8 on cross-examination someone would have said to him you
9 told a nice story to the jury, but you didn't tell
10 Mr. Applegate that. You didn't tell Logan Anderson
11 that. You didn't tell the other brokerage houses that,
12 because that same -- even though I didn't write it
13 here, that same misrepresentation I think reverberated
14 to the other brokerage houses. Because what happened
15 was TD Ameritrade, when they decided enough is enough
16 with this guy, they turned him off and then they jumped
17 on to -- I don't know, I don't remember which one.
18 Then went on to, for exampale, E*TRADE and Scottrade
19 and TradeKing, and the same thing kind of developed.
20 What's the purposes of these accounts.

21 So one of the pitfalls that I had with this was
22 Mr. Vilker and Mr. McAdams is going to cross-examine
23 you. If this is all legitmate, why wouldn't you just
24 tell Logan Anderson and these other people exactly what
25 you told the jury. You didn't tell them, sir, because

1 they wouldn't have accepted and opened up the accounts,
2 and that's the lie that I'm referring to there.

3 Q. You also referenced here a lie to LifeMark. Did
4 you have a basis to believe that Mr. Caramadre lied to
5 LifeMark?

6 A. Yes.

7 Q. What's the basis of that?

8 A. Again, this is all subject to my memory. In late
9 2007, I believe Jefferson National Life Insurance
10 Company filed a complaint with the Department of
11 Business Regulation. And I think they got wind of
12 these accounts being opened up with annuitants.
13 LifeMark is the broker/dealer that Edward Maggiacomo
14 worked for I guess as an independent contractor, but he
15 had parked his license with LifeMark. So when LifeMark
16 gets the complaint with DBR with Jefferson National,
17 they know what's going on now. And a lot of these
18 annuities were opened up through LifeMark. LifeMark is
19 now on notice that there's stranger annuitants being
20 used and being paid.

21 So LifeMark did a couple of things. In January,
22 I think it was late January 2008, they created a couple
23 of forms. The forms were called something to the
24 effect of, again, I have to look at them, an owner
25 acknowledgment form and an annuitant acknowledgment

1 form. And basically those were forms created by
2 LifeMark that they gave to Mr. Maggiacomo and I think
3 they give to all their agents because they saw this
4 potential loophole, and they wanted both the
5 owner/investor of any new annuities and any annuitants
6 to sign that form. And basically the form by memory
7 said the owner was acknowledging that no payment would
8 be made to the annuitants. So an annuitant agrees to
9 become an annuitant for an owner, but the owner says I
10 have not paid the annuitant to do this for me.

11 Similarly, the annuitant had to sign a form that
12 said I've agreed to serve as an annuitant for this
13 investor, but I've acknowledged that I haven't received
14 any compensation nor will I receive any compensation in
15 the future.

16 So they create these forms and what happens is
17 that's fine and dandy, but annuities are still opened
18 up, and I believe the evidence shows that owners and
19 annuitants are signing those forms.

20 **Q.** Even though they're being paid?

21 **A.** Even though they're being paid. And I think the
22 evidence showed that they're just signing them blank
23 and no one's really explained this stuff to them, but
24 how that gets into a lie to LifeMark is this. LifeMark
25 in April, again this is subject to memory, there's a

1 lot of documents in this case, but my memory is that in
2 April of 2008, Jim Prisko, who I believe is an attorney
3 and I think he was CEO and owner of LifeMark, and Lori
4 Alberts who worked for LifeMark came down to Estate
5 Planning Resources and they did an audit of
6 Mr. Maggiacomo. I believe the audit was a routine
7 audit, but they both came down. I find it strange that
8 it was a routine audit because Jim Prisko is the CEO
9 and one of the questions I would have asked him was how
10 often are you doing audits.

11 But they did an audit of Mr. Maggiacomo, and
12 then after they did that audit, Mr. Maggiacomo's
13 office was within Mr. Caramadre's office, they had a
14 meeting with Mr. Caramadre and Mr. Prisko I believe
15 testified in his Grand Jury testimony, so did Lori
16 Alberts, that they asked Mr. Caramadre, Where are you
17 finding these people? Why would an annuitant, this
18 stranger agree to serve as an annuitant for an owner?
19 There's no relationship. Why? Where do you find these
20 people?

21 Both Mr. Prisko and Ms. Alberts were going to
22 testify, I believe, according to discovery, that
23 Mr. Caramadre told them that he found these people
24 because the Diocese asked him to, since he had a lot of
25 money, to bury deceased people who didn't have any

1 funds to be buried and then Mr. Caramadre ran into
2 these people and that's how he came across these
3 people.

4 I asked Mr. Caramadre, that doesn't make any
5 sense because people already died and passed away. How
6 could they be annuitants? Well, they were really
7 annuitants -- they were really friends that he met of
8 deceased people he laid to rest so they kind of owed
9 him an obligation and they agreed to do it.

10 So I asked Mr. Caramadre, I need to know, did
11 you make this statement to Mr. Prisko and Ms. Alberts?
12 We need to know this. In fact, I think the Government
13 had subpoenaed someone from the Diocese to ask what
14 Mr. Caramadre paid for funerals and stuff. And the
15 answer was absolutely not. We never asked him to do
16 that. There's no such fund and we pay for ourselves
17 absent a state stipend.

18 So I asked Mr. Caramadre, Did you say this?

19 Now, my memory is, is that he said, Maybe I did
20 and maybe I didn't. Who cares? It really doesn't
21 matter. And I said, It matters to me. I need to know,
22 did you say this to them. I need to know how to
23 cross-examine these witnesses. We need to know it. If
24 you said it, then we'll have to figure out a way. And
25 I didn't know what the defense was going to be, but

1 we're going to figure out a way -- what to do with
2 that. He says, You know what, chalk it up. I said it.
3 Let's move on. You're getting into minutia, Mike.
4 You're always worrying about minutia. Don't worry
5 about it. I'll get on the stand and explain everything
6 away.

7 So to me, that was -- if he said that to
8 LifeMark and these forms are going in and they're
9 getting signed post-January 2008 with LifeMark saying
10 we'll accept it, we'll accept these forms but we'll
11 accept these annuities on these stranger annuities, but
12 absolutely not -- people have got to sign these forms
13 that they're not getting paid.

14 Now, I just want to jump to one thing. My
15 cross-examination was of LifeMark which I would have
16 hit them hard was, so what. You were just covering
17 yourself. Those forms didn't go to the insurance
18 companies and they were really an agent for the
19 insurance companies and that makes no sense because
20 whether or not the annuitants are getting paid, they're
21 getting paid or they're not getting paid, you know that
22 they're still terminally ill. You're allowing them to
23 be named as annuitants. The annuity policies are going
24 to the insurance companies. And whether or not they're
25 getting paid they're going to die very quickly, and the

1 insurance company, if the market goes down, is going to
2 get hit hard. So that makes no sense, Mr. Prisko and
3 Ms. Alberts, about your Band-Aid approach to coming up
4 with these forms.

5 These forms did nothing to protect the insurance
6 companies. These forms were so they could have them in
7 their files so they could protect themselves.

8 So in terms of cross-examination when we got to
9 that other category of witnesses, I was going to hit
10 them hard because everyone wanted to blame
11 Mr. Caramadre for employing this technique or this
12 method. But guess what? Everyone was in on it,
13 including the insurance companies, which would have
14 been part of the defense. These insurance companies
15 accepted these policies. The broker/dealers accepted
16 these policies. And whether or not people are getting
17 paid, so what. Everyone was in on it, and everyone
18 wanted the money because the annuities were a lot of
19 money.

20 Q. So when you were working on the statement of
21 facts, you believed that Mr. Caramadre could truthfully
22 admit to lying to LifeMark?

23 A. Yes.

24 Q. As an attorney, you believed that that could
25 truthfully be the basis for him pleading guilty to

1 committing fraud?

2 A. Yes.

3 Q. Nonetheless, you're still, as you concede ready to
4 go and ready to argue the point if and when the plea
5 ever fell through?

6 A. 110 percent. That's months ago and a lot of
7 things have left my mind.

8 Q. So now, there were multiple documents that were
9 associated with the actual guilty plea; is that fair to
10 say, the plea agreement itself, the statement of facts,
11 Mr. Radhakrishnan also pled guilty as well to the same
12 statements of facts?

13 A. Yes.

14 Q. And on top of those legal documents, yourself and
15 Mr. Traini had Mr. Caramadre sign a new letter; is that
16 fair to say, memorializing the change that had taken
17 place that he had revoked his directive not to
18 negotiate a plea and described the plea agreement?

19 A. Yes. I think it was a letter dated November 19th.
20 It was the date of the plea, and we had him execute
21 that before the change of plea occurred to have a
22 written confirmation that he had revoked the prior
23 September 13, 2012, letter saying do not open up plea
24 negotiations.

25 Q. So we were just talking about the statement of

1 facts. Is it fair to say that yourself and Mr. Viler
2 were the two individuals doing the most editing to the
3 statement of facts?

4 A. Yes.

5 Q. Could you describe your communications with
6 Mr. Caramadre on the weekend of the -- excuse me, 17th
7 and 18th of November regarding the progress of those
8 negotiations and the facts that were ultimately agreed
9 upon.

10 A. The one thing I want to make clear is, is that
11 there was back and forth between me and Mr. Vilker. In
12 fact, we had a phone conversation where we actually
13 said instead of going back and forth with e-mails, we
14 were making some changes and we were making some
15 concessions back and forth. That was the phone
16 conversation.

17 I had a communication, I believe, on Saturday
18 with Mr. Caramadre saying, you know, I got the
19 statement of facts, and I orally explained it to him.
20 I do not believe that I gave him a copy of the
21 statement of facts on Saturday, and I didn't give it to
22 him on Sunday. He didn't see the final version until
23 Sunday night when Mr. Traini and I met with him. But I
24 did orally explain to him what the statement of facts
25 was. And basically the way I explained it was it's a

1 conspiracy count and it's Count -- it was Count 9 with
2 Mr. Rodriguez. But basically when I summarized it for
3 him, it's almost like a summer of the indictment. He
4 wasn't happy. I said I'm going to have further
5 communications with Mr. Vilker. And he says, I trust
6 you, Mike. You know, I trusted you this whole way. I
7 said, Look, I'm going to try to water this down
8 because what was important to Mr. Caramadre was the
9 perception of this. And what I was trying to do with
10 Mr. Vilker was to water this down as much as possible.

11 Mr. Caramadre had agreed to plea to those
12 particular counts. Now it was a matter of what was the
13 statement of facts going to look like. And I was
14 trying to convince Mr. Vilker to -- I don't think I
15 used the words "water down," but in my brain, in my
16 mind I was trying to water that thing down as much as
17 possible.

18 Q. On Mr. Caramadre's behalf, you were trying to
19 water down the fact that he would admit to as much as
20 possible?

21 A. Absolutely.

22 Q. And obviously, Mr. Vilker could only agree to so
23 much?

24 A. As I understood it, his hands were tied, that this
25 wasn't a statement of facts that he drafted, that your

1 management was intimately involved; and I think he
2 wrote to me at some point, There's not much wiggle room
3 in this, Mike.

4 Q. Now, were there some specific changes that
5 Mr. Caramadre insisted upon in those statement of
6 facts?

7 A. I don't believe so at that point. I believe,
8 getting back to the Thursday and Friday, even though we
9 didn't have a statement of facts, Mr. Caramadre
10 communicated to us that it was very important that
11 whatever the plea was that he needed certain people not
12 mentioned in the statement of facts or the plea
13 agreement.

14 Q. Who were those, if you recall?

15 A. One that really comes to mind is Mr. Lamonte who
16 was -- that's Mr. Caramadre's brother-in-law and
17 Mrs. Lamonte, who is his sister-in-law. Mr. LaMonte's
18 father served as an annuitant on some transactions. I
19 don't recall how many. And that was a sore spot with
20 Mr. Caramadre.

21 Q. He did not want to admit that he had used a family
22 member as a measuring life in that way?

23 A. Yeah. That was one that comes to mind right now.

24 Q. Was AEGON Corporation another, or Western Reserve?

25 A. I think you're referring to AEGON.

1 Q. AEGON. Excuse me.

2 A. Yes. But to be honest with you, Mr. McAdams, I
3 believe that came from me because I think I initiated
4 that because my concern was that there were civil cases
5 pending in this courthouse, and I wanted to see what I
6 could do, if anything, to avoid an admission in the
7 statement of facts to harm the client in an adverse way
8 in the civil proceeding.

9 Quite frankly, you know, I didn't do research on
10 this, but my gut told me that any admission was going
11 to be hurtful in the civil cases. But to the extent
12 that I could reserve some argument or put the client in
13 the best posture possible, that I wanted AEGON and
14 Western Reserve -- it might have been their names
15 because I believe the insurance companies and the bond
16 issuers remained in the statement of facts. It might
17 have also been any annuitants that were referenced in
18 those AEGON or Western Reserve policies I wanted
19 extracted from the statement of facts. But that was
20 really me. That wasn't Mr. Caramadre.

21 Q. So even as you were attempting to negotiate the
22 statement of facts on Mr. Caramadre's behalf, you were
23 also trying to look out for his best interest in terms
24 of his potential financial civil liability?

25 A. At all times, yes.

1 Q. So we talked about the first week of the trial.
2 We talked about Friday. We talked about Saturday,
3 communications with Mr. Caramadre. He left you
4 Saturday night with this e-mail, What about Alford
5 plea.

6 Could you turn your attention to Sunday, the day
7 before the plea hearing. What, if any, meetings did
8 you have or conversations did you have with
9 Mr. Caramadre regarding the guilty plea?

10 A. I don't recall phone conversations. There may
11 have been at this point. I know that Mr. Caramadre and
12 I attend the same church, which is Holy Apostles in
13 Cranston; and I recall having face-to-face conversation
14 with Mr. Caramadre that, to use Mr. Vilker's phrase,
15 there wasn't much wiggle room left in the statement of
16 facts and that he needed to make a decision because we
17 were in the middle -- we were in trial.

18 And I also addressed the Alford plea reference
19 from Saturday night. And I don't remember the exact
20 words but I said something to the effect of, you know,
21 you're an attorney, I'm an attorney. You're sworn
22 under oath at a change of plea hearing. You can't lie.
23 I'm not going to instruct you or tell you to lie
24 because I'm an officer of the Court and that cuts
25 against my professional obligations as an officer of

1 the Court and it cuts against my moral fabric. I'm not
2 doing that. And I'm like, I expect that you wouldn't
3 do that either.

4 Attorneys that do that can get disbarred. It
5 wasn't my license I was concerned about. It was doing
6 the right thing for the client.

7 And I basically told him, Look, you've got to
8 give some thought to this. You're either going to
9 accept it or not accept it. We're in trial. If you
10 don't want to accept it, we'll march on with trial.
11 And I'm prepared. I don't think it's going to end
12 well. I've got to be honest with the client. My
13 assessment it wasn't going to end well. But the choice
14 is yours. They might not be great choices right now,
15 because you know if you're seeing the same evidence I
16 am, it's going to end badly for you, but the choice is
17 yours. And either you tell the truth and you accept
18 the statement of facts or you don't and you head on in
19 trial.

20 Q. Did you in any way give him a wink and a nod that
21 what you were really indicating was that it would be
22 okay for him to lie at the plea and get through it?

23 A. No. Absolutely not.

24 Q. Did you have any confusion about that conversation
25 with him on Sunday?

1 A. No.

2 Q. Did you have any observation about his mental
3 state when you had that conversation?

4 A. He absolutely comprehended everything. He
5 understood. He was clear in his thinking. He was
6 obviously down and depressed. I mean, let's face it,
7 you know, he paid a lot of attorneys before me to
8 defend these allegations. This was a burden on him.
9 And he saw the evidence at trial, and he understood. I
10 thought he was making -- he was making a good decision
11 by pleaing, but just like -- I had conversations with
12 him, just like it's his decision to testify or not
13 even though attorneys can give advice, it's his
14 decision to plea. And I just left it at that and said
15 give some thought to it. I think I told him I'm going
16 to do my best to try to water down the statement of
17 facts. I think I used the words there's not a lot of
18 wiggle room here. I don't want to create any
19 misunderstanding with him.

20 Q. Was Mrs. Caramadre present at that conversation
21 you had after church with Mr. Caramadre?

22 A. I'm not sure. I'm really not sure. She may have
23 been part of it. I'm not sure.

24 Q. So I take it that was in the morning, after Sunday
25 Mass?

1 A. Yes. So Mass is at 11:15 so it would have been,
2 you know, after 12 o'clock. And we were there for a
3 little bit because the one person trying to close up
4 the church, I think we were one of the last ones kind
5 of walking by, kind of giving a hint like, okay, let's
6 wrap it up. So it would have been after 12 on Sunday.

7 Q. Did you have any additional meetings with
8 Mr. Caramadre on Sunday regarding the plea?

9 A. Sunday night with Mr. Traini.

10 Q. And where did that meeting take place?

11 A. In Mr. Caramadre's house.

12 Q. Who was present for that meeting?

13 A. Myself, Mr. Traini, Mr. Caramadre and
14 Mrs. Caramadre.

15 Q. What was your observation of Mr. Caramadre's
16 mental state at that time?

17 A. He understood. He comprehended. He was fine.
18 Again, he was down and depressed. There's no doubt
19 about it. I mean, you're making a big decision about
20 whether you're going to take a plea or not and probably
21 going to jail for some time, but there was no doubt in
22 my mind that he understood what was communicated to him
23 and what was going on.

24 Q. So did you present him and show him the documents
25 in person at that point in time?

1 A. Yeah. Actually, Mr. Traini did. We sat at the
2 dining room table. Mr. Traini sat at the top of the
3 table. I sat off to the side. Across from me was
4 Mr. Caramadre, and Mrs. Caramadre was next to
5 Mr. Caramadre.

6 Q. Okay.

7 A. And Mr. Traini, because I made copies for everyone
8 to have because what I like to do is, I do this at
9 change of plea hearings or going over documents, it's
10 not appropriate just to be reading a document and not
11 give it to the client. So I think I printed out in my
12 home office, I have a little office in my home, the
13 documents. I printed out the plea agreement, which
14 wasn't completely finalized but it was close to being
15 finalized. We made some changes to it. I printed out
16 the statement of facts, which was just about complete,
17 for myself and Mr. Traini and Mr. Caramadre. And I
18 remember Mr. Traini giving those two documents to
19 Mr. Caramadre and Mr. Caramadre having them in front of
20 him, then Mr. Traini went on to explain the plea
21 agreement and the statement of facts.

22 Q. So Mr. Caramadre had the documents in front of him
23 and was able to read the documents?

24 A. My recollection is that Mr. Traini, each of the
25 documents, he was reading from them and then

1 summarizing paragraphs and Mr. Caramadre had those
2 documents in front of him following along on paper and
3 then listening to Mr. Traini. Mr. Traini did most of
4 the talking during that meeting.

5 Quite frankly, I was burnt out at that point so
6 Mr. Traini basically handled the meeting.

7 Q. Essentially explaining the terms of the plea
8 agreement, going through each paragraph?

9 A. Going through each paragraph, going over the
10 statutory penalties. Going over all the paragraphs.
11 And not only reading them, because even though
12 Mr. Caramadre is a lawyer, he's not a criminal defense
13 lawyer so Mr. Traini not only read them but he
14 explained the documents to him.

15 Q. Did you have any doubt as to whether Mr. Caramadre
16 understood what those documents were saying?

17 A. No. He absolutely understood.

18 Q. Did he indicate that to you in any way?

19 A. I don't remember him saying "I understand," but
20 Mr. Traini explained the documents to him and by the
21 time -- let me say this. By the time the meeting
22 wrapped up, I think the talking that I did, the limited
23 talking I did was to let the client know what's going
24 to happen next. And what was going to happen next is,
25 because Mr. Caramadre and I live on the same street,

1 drive home, and I'm going to immediately when I get
2 home draft an e-mail for Judge Smith because I had sent
3 a prior e-mail to the Court saying that Mr. Traini and
4 I are going to meet with Mr. Caramadre to go over the
5 proposed plea agreements, and I told the Court I'm
6 going to get back to him one way or the other when I
7 get back.

8 So I told the client and Mrs. Caramadre I'm
9 going to go back to my office. I'm going to e-mail the
10 Court and let the Court know that Mr. Caramadre has
11 accepted the plea agreement and the statement of facts,
12 that we are going to go ahead with the change of plea
13 tomorrow and that we need -- I don't know if I put this
14 in the e-mail, but I know we needed a couple of small
15 revisions on the plea documents and that we would be
16 ready -- I think we were supposed to meet with the
17 Court at 8:30 in the morning before any change of plea
18 hearing. Because the one thing that needed to happen
19 was Judge Smith had indicated that he absolutely,
20 although he was okay with the nature of the proposed
21 Rule 11(c) plea with a cap of ten, he needed to see the
22 plea documents, which he had never seen the plea
23 documents or wouldn't until Monday morning. So his
24 tentative okay on that, his imprimatur on that wasn't
25 final until he saw the plea agreement.

1 **Q.** This plea was unusual in the sense that not only
2 did it bind the Government and the Defendants, but it
3 also would bind the Court, at least in part, in terms
4 of if the Court failed to follow the recommended
5 sentence, then Mr. Caramadre and Mr. Radhakrishnan
6 would be released from their requirements under the
7 plea agreement?

8 **A.** Right. This is all subject to the Court being
9 bound by, which is as I think I testified before, most
10 plea agreements are non-binding. This was binding in
11 the sense of not binding to a specific sentence but
12 binding as to a cap as to what the sentence could be,
13 and we needed Judge Smith's approval.

14 If Judge Smith reviewed the documents on Monday
15 morning, the 19th, looked at them and said this is
16 unacceptable, then we were getting ready to call the
17 next witness.

18 **Q.** That was something you explained to Mr. Caramadre?

19 **A.** Absolutely. There's no way I'm leaving
20 Mr. Caramadre's house and sending an e-mail to the
21 Court saying -- you know, I need to look at the e-mail
22 so I don't know exactly what I wrote -- to Judge Smith
23 that Mr. Caramadre and Mr. Radhakrishnan -- I think I
24 wrote that, too -- Mr. Caramadre is ready to enter a
25 plea unless he's going to do it. Because if there's

1 any doubt in my mind, that's horrible just from a
2 reputation standpoint to tell the Court and the
3 Government, oh, yeah, we're going to plea tomorrow
4 morning and then it not happen. I left his house no
5 doubt in mind he was pleaing. And that's why I made
6 the representation to the Court and to the Government,
7 which the Government was copied on that e-mail.

8 Q. Now, during the course of those conversations, do
9 you recall Mr. Caramadre repeatedly stating, How am I
10 going to get around the problem of lying?

11 A. He did mention at the Sunday night meeting
12 something about lying. And I just -- I don't have a
13 vivid memory of exactly what he said so I don't want to
14 put words in his mouth because it will be unfair. He
15 might have said something to the effect of I guess I'm
16 just going to have to lie or maybe I'll just have to
17 lie or something to that effect. He did make that
18 comment.

19 Q. What, if anything, was your response or yourself
20 or Mr. Traini to that comment?

21 A. I didn't say anything. And no one will understand
22 it because you're not sitting in my shoes about all the
23 work that I did and dealing with Mr. Caramadre, he can
24 be a difficult client in my extensive conversations
25 with him beforehand. Mr. Traini jumped in right away.

1 And again, I don't remember exactly what Mr. Traini
2 said, and I don't want to put words into his mouth. He
3 said something to the effect of I don't want to hear
4 anything about lying; you can't lie. And then he said
5 something to the effect of -- again, I'm paraphrasing
6 and it's unfair, but something to the effect of, You
7 might think you're lying now but what matters is
8 whether you believe you're telling the truth tomorrow
9 because when you're under oath you've got to tell the
10 truth. It was something to that effect. I'm doing a
11 disservice to the words because I just don't remember.
12 It was something to that effect.

13 Q. When you heard Mr. Traini make that explanation to
14 Mr. Caramadre, did you view that in any way as
15 Mr. Traini indicating to Mr. Caramadre that it was okay
16 to lie to plead guilty?

17 A. No.

18 Q. Was it any type of wink and a nod or Kabuki dance
19 that I'm saying don't lie but I really mean lie?

20 A. No. In fact, I had a conversation with Mr. Traini
21 afterwards because Mr. Traini and I -- like I said, I
22 live right down the street from Mr. Caramadre,
23 literally about a block away -- and we drove in the car
24 together. And I think that comment came about -- my
25 communication with Mr. Caramadre, which not only

1 happened on Sunday, which also happened back in May,
2 April or May, and I need to put this on the record.
3 Mr. Vilker and I were talking about a potential plea.
4 I absolutely before Mr. Traini ever got involved in
5 this case had discussions with the client about a plea
6 because that's a defense attorney's obligation. And
7 after I started looking at the evidence, I'm saying
8 I've got to at least open up discussions. And
9 Mr. Caramadre would say, Well, I'm not going to lie.
10 He said that long ago back in May, April or May before
11 Mr. Traini ever got involved. And I know that the
12 discussions I had with Mr. Caramadre back then, you
13 can't lie, that it's a non-starter. We're not going to
14 bother entering the plea negotiations. I had those
15 with him. You can't be under oath.

16 So I was comfortable with what I had told him.
17 I think what happened was that I was comfortable with
18 all the discussions I had with Mr. Caramadre. He's an
19 attorney. He's a very smart man, and he understands
20 exactly what his obligations are and I think Mr. Traini
21 said that because it was a difficult situation.

22 Mrs. Caramadre was right there sitting at the
23 dining room table. She was there from the beginning to
24 the end, my memory, of the whole meeting. Okay? And I
25 don't believe, okay, that Mr. Caramadre is telling the

1 truth when he's saying, Well, I guess I'm going to have
2 to lie, because I know there's an independent basis for
3 it. I know that he made misrepresentations to
4 LifeMark. I know that he's made misrepresentations to
5 TD Ameritrade. I know that there are other
6 misrepresentations that we didn't talk about today.

7 So when the client is saying, Well, I guess I'm
8 going to have to lie, well, that means nothing to me
9 because I know there's an independent basis for the
10 plea. So I believe and I think Tony believed, and
11 you'll have to ask him, that it's an uncomfortable
12 situation. Mrs. Caramadre is right there. And what
13 are we going to do? Are we going to get into
14 discussions, Well, you recall you made an admission
15 about Mr. Mizzoni's annuity application about why and
16 address, why your parents' address went on there. You
17 know, recall that you admitted that Denise Egan and
18 Raymour Radhakrishnan met with one another and you put,
19 you instructed Raymour to put "friend" on the
20 application because they met at your office and you
21 said, By the way, now you guys are friends.

22 I knew those kinds of things existed. So this
23 wasn't a situation where I have a client who's charged
24 with murder and he's in California and I know he's in
25 California and the murder happened in Rhode Island and

1 he's charged with actually doing the murder by his own
2 hands in Rhode Island and he's saying, I was in
3 California. And I'm going, Look, just take the plea,
4 don't worry about it, just say you were in Rhode
5 Island.

6 That's not the situation. What the situation
7 is, is that we know there's an independent basis. And
8 Mr. Traini knew that, I knew that because I relayed
9 that kind of evidence to Mr. Traini. So we thought he
10 was lying. I'll say at least I thought he was lying
11 when he said that, not to have Mrs. Caramadre know all
12 those details. And you know what, I was exhausted.
13 Mr. Caramadre knows what he said to me. He knows the
14 basis for the plea and you know what, it's his decision
15 and he said that he's going to plea.

16 Q. So you viewed that statement of being
17 Mr. Caramadre attempting to save face with his wife by
18 not admitting it in front of her?

19 A. Yes.

20 THE COURT: Mr. McAdams, why don't we take a
21 break now. I know you're probably getting close to the
22 end, but let's go ahead and take our break and
23 reconvene in ten minutes.

24 (Recess.)

25 THE COURT: Mr. McAdams.

1 MR. McADAMS: Thank you, your Honor.

2 Q. Mr. Lepizzera, when we left off, I believe you
3 just testified that you believe that on the night of
4 November 18th that Mr. Caramadre may have lied when he
5 made the statement about lying to plead guilty in order
6 to save face with his wife. Is that a fair assessment?

7 A. Yes.

8 Q. And in your experience as a criminal defense
9 attorney, is the presence of a loved one sometimes a
10 challenge or an obstacle in dealing with a client in
11 getting them in a position where they're prepared to
12 accept responsibility for their actions?

13 A. Yes. I was actually surprised that Mrs. Caramadre
14 was there.

15 Q. Why was that?

16 A. Because during the course of the representation, I
17 never got a chance to interview her or talk to her
18 about the allegations and the substance of the case;
19 and that was important because her name is all over
20 these annuities and bonds. And although I would see
21 Mrs. Caramadre at church and in a social setting, I
22 never got a chance to talk about what happened with
23 particular annuities or bonds that she was involved in,
24 at least her name was, because Mr. Caramadre didn't
25 want me to talk to her.

1 Q. Is it also not uncommon for clients to be more
2 candid, more forthcoming when they're just alone with
3 you as their attorney?

4 A. Of course.

5 Q. And in fact, you testified Mr. Caramadre has made
6 numerous admissions to you in the course of your
7 representation with respect to, for example, of lying
8 to TD Ameritrade or to LifeMark?

9 A. Yes.

10 Q. Did he also, during the course of the
11 representation, ever admit to you that he had forged
12 any documents?

13 A. Only with respect to his wife's signature.

14 Q. So he admitted that he had forged his wife's
15 signature?

16 A. Yes. I think it was on the Wiley documents, and I
17 had asked him, you know, did Paula sign these
18 documents? And he said, Well, no. And he said, That
19 was my left hand.

20 Q. And those were the documents that were notarized
21 by his employee as having been signed in the presence
22 of Mrs. Caramadre?

23 A. If you want to call it notarized. There was
24 another issue in the case about the notaries weren't
25 really properly notarizing documents. They were just

1 stamping and signing it was notarized but people
2 weren't signing in front of them, but yes.

3 Q. So that was Sunday night and you mentioned earlier
4 we had to be at court at 8:30 the next morning on
5 Monday.

6 Before the Court conducted its change of plea
7 colloquy with Mr. Caramadre, did you present him with
8 the final official no more edits documents.

9 A. I'm trying to remember whether we had those, and
10 I'm a little unclear on this point. I believe that we
11 met with Mr. Caramadre before we had a chambers
12 conference with Judge Smith. It might have happened a
13 little bit later than 8:30, but it was supposed to be
14 at 8:30. I'm not sure -- do you know what Mr. McAdams?
15 We didn't have those documents at that point because,
16 remember, the Court still hadn't seen the documents.
17 So there'd be nothing to sign because it was subject to
18 Judge Smith's approval, and he hadn't seen the
19 documents yet.

20 So Mr. Caramadre did not sign the documents
21 during the pre-Judge Smith chambers meeting. We did
22 meet with him very briefly and then went to chambers.

23 Q. After the chambers conference, did you meet with
24 Mr. Caramadre and show him the original documents?

25 A. Absolutely.

1 Q. Did he voice any objection to them?

2 A. No. He executed the November 19th, 2012 letter
3 that Mr. Traini had drafted, which authorized us to
4 enter into plea negotiations revoking the September
5 13th, 2012 letter instructing us not to negotiate with
6 the Government, and he also signed the final plea
7 agreement, and he also signed the final statement of
8 facts. I think Mr. Traini had also reviewed with him
9 the documents, not like he did on Sunday night, but in
10 a cursory manner he did review the plea agreement and
11 the statement of facts again.

12 Q. Did Mr. Caramadre have those documents in front of
13 him, the plea agreement and the statement of facts?

14 A. Yeah, because he was about to sign, and I think
15 Mr. Traini went over a couple of things. Maybe some
16 changes. I don't recall what the changes were. But he
17 went over the documents not as he did like the night
18 before, but he went over the documents and
19 Mr. Caramadre said, Okay, let's get this done, or
20 something to that effect. And he signed the documents
21 and we walked down the hall. I think we were on the
22 second floor. I can't remember where our conference
23 room was. But we went to this courtroom and we
24 exchanged plea documents.

25 Q. During that process when Mr. Traini was

1 summarizing the plea agreement, when Mr. Caramadre
2 executed the documents, what was your impression of his
3 mental state?

4 A. He was absolutely fine in the sense of he
5 absolutely understood what was going on. He
6 comprehended everything. He communicated with us.
7 Again, he was -- I'm not saying clinically depressed,
8 but he was down. This was the end of the road. He
9 fought long and hard and the case was coming to an end
10 and it didn't end the way he wanted it to since the
11 beginning of time, which was get an acquittal on
12 everything and sue the Government for malicious
13 prosecution and file OPR complaints and file
14 disciplinary complaints.

15 So he was down in that sense, but he absolutely
16 understood no doubt in my mind what was going on.

17 Q. Did he ever indicate to you that he wanted to
18 reach out on an emergency basis to his psychotherapist?

19 A. No.

20 Q. Did he ever tell you that he had tried to reach
21 his psychotherapist but she was away in Africa and what
22 was your advice, what should he do about it?

23 A. No.

24 Q. Did he ever tell you that he thought he needed to
25 seek medical or psychiatric attention?

1 A. No.

2 Q. Do you have any reason to believe that as the
3 change of plea colloquy took place on November 19th
4 that Mr. Caramadre's mental competence was in any way
5 compromised?

6 A. No. And I'm not an expert in that area, but
7 based on my knowledge of Mr. Caramadre, my experience
8 of him, did nothing whatsoever that gave me any inkling
9 that he didn't understand. He understood what was
10 happening.

11 Q. If he had indicated to you in some way or you had
12 made observations that he doesn't seem mentally fit
13 here, what would you have done?

14 A. Would have called a time out. Would have been our
15 obligation. And we would have met with the Court and
16 said that we have concerns about the client's
17 competence to enter in a plea.

18 Now, don't forget, we're also on trial. And
19 what I'm a little confused about and I don't know all
20 the allegations because I'm not an advocate anymore in
21 this case, but this whole thing about he didn't
22 understand, we were on trial. He was okay to stand
23 ready for trial and be on trial. I'm just confused
24 about him -- he's okay to be on trial, but he's not
25 okay to enter a plea. There's nothing at all in my

1 mind, in my knowledge of him, that he didn't
2 understand. He understood exactly what he was doing.

3 Q. So you never had any doubts about his mental
4 ability from the first day of the trial through the end
5 of the plea colloquy?

6 A. His ability to comprehend and participate, no.

7 Q. Now, when he executed those plea documents with
8 you, did he say anything along the lines of "This is a
9 lie; I'm signing a lie here"?

10 A. On November 19th?

11 Q. Yes.

12 A. Absolutely not.

13 Q. You were present in the courtroom when
14 Mr. Caramadre went through the plea colloquy with the
15 Court?

16 A. I was present.

17 Q. Okay. When he completed the plea colloquy, did he
18 say anything to you during that -- before, during or
19 after to indicate that he was lying?

20 A. No. Mr. Traini sat on -- where Mr. Vilker's table
21 is, is usually the prosecution, but because of the size
22 issues we took that table. Mr. Traini sat on the
23 outside. I sat next to Mr. Traini, and then to my
24 right was Mr. Caramadre.

25 Mr. Caramadre stood. And what I do is, and I do

1 this in every case, I absolutely had the plea agreement
2 and if there's a statement of fact and sometimes there
3 isn't, but in this case there was, I had those
4 documents in front of the client. And the client -- I
5 was sitting. I think he was standing and I have them
6 in front of them because the Court -- you know, he
7 should follow along with the Court when he's
8 explaining. So there's no doubt in my mind he knew
9 what was going on and he had those documents, the
10 executed documents in front of him. In fact, I said to
11 you, John, I need the fully executed version because I
12 need to have those in front of the client. Which you
13 gave me a copy and I had them in front of him during
14 the change of plea.

15 Q. Now, when the plea ended and you left the
16 courtroom, did Mr. Caramadre say that there was a lie
17 or anything of that nature?

18 A. No. I later saw him -- this was Monday, November
19 19th. Our church does Thanksgiving baskets for the
20 needy. And I happened to go to church to -- I don't
21 know if I was giving money or assisting or whatever I
22 was going to do to help out with the Thanksgiving
23 baskets. And I actually ran into Mr. Caramadre at Holy
24 Apostles. And, one, I was surprised that he was there
25 because I figured, you know, it's breaking news, he

1 pled guilty, it was a difficult time for him. So I
2 figured he would just go home.

3 He was there at Holy Apostles, and he was in
4 good spirits. And I was actually pleased. I remember
5 my reaction to it at least internally that, you know,
6 he said that he's glad it's over and it's really a
7 weight off his shoulders and he's just glad it's over
8 and we had a brief chit-chat. Then someone else came
9 over and I don't want to discuss in front of someone
10 else, but I was happy. I was actually good, you know.
11 He made a good decision. He's seeing the light. He's
12 going to move on. He's going to get past this, and his
13 family can get past it. So I was actually pleased at
14 that point, although that changed.

15 Q. Now, from the perspective of you as an attorney,
16 is the guilty plea the end of the process?

17 A. No. And in this case it wasn't even close.

18 Q. So just from a general perspective, what were the
19 next few things that were going to need to take place
20 after Mr. Caramadre had pled guilty?

21 A. Normally, what happens is, at least my experience
22 is that the sentencing date is usually about 90 days
23 out, and the Court sets that date because there's a
24 presentence interview, there's a draft presentence
25 report, there's objections from both sides, if any;

1 sentencing memorandums recommending particular
2 sentences.

3 In this case, Mr. Traini and I were concerned
4 that 90 days wasn't going to be sufficient to do what
5 we needed do for Mr. Caramadre. We needed to educate
6 this Court, okay, yes, we have a guilty person standing
7 before you. He's now convicted of whatever his counts,
8 9 and 33, whatever the counts were. But he is a man
9 that's done a lot of good, a lot of good. And our job
10 was to educate this Court about all the good that
11 Mr. Caramadre did that, like I said before, he's not
12 the typical defendant that comes before this Court.

13 So we wanted to do that. We wanted to get
14 letters from everyday, ordinary people and influential
15 people. You know, get letters, present Mr. Caramadre
16 in the most favorable light. To say that, you know
17 what, he had this bad moment in his life, but here's
18 the other side of Mr. Caramadre.

19 There were restitution issues as I think I
20 alluded to before. You know, this Dr. Kalotay that was
21 the proposed expert on the bond issue. Mr. Traini and
22 I believed we had a very good argument in terms of
23 whether there were really any losses, so to speak, that
24 should be counted for either the guideline calculation,
25 which really didn't matter because we had a ten-year

1 cap, or restitution, that that shouldn't count. So we
2 had that issue. Just a host of issues of educating the
3 Court about who Mr. Caramadre is.

4 So I think the Court had set down what Judge
5 Smith might have called a placeholder date. So I think
6 we put down February, early February as the initial
7 sentencing date but it was understood, I think by the
8 Court and the parties and the Government, that, you
9 know, we would probably ask for additional time to
10 prepare.

11 Q. And during that time after the guilty plea in
12 advance of that sentencing date, did you continue to
13 have discussions with Mr. Caramadre?

14 A. Yes.

15 Q. When was the first time that he indicated to you
16 that he was thinking about withdrawing his guilty plea?

17 A. I think he did in early December.

18 Q. I'd like to show you Government Exhibit Number 23,
19 which is Bates marked 469.

20 THE COURT: Is there any objection?

21 MR. OLEN: No, your Honor.

22 THE COURT: Exhibit 23 will be full.

23 (Government Exhibit 23 admitted in full.)

24 Q. These are your notes?

25 A. They are.

1 Q. Okay. And it indicates December 14th, 2012?

2 A. I think that's December 14th.

3 Q. December 14th, 2012. Okay. You have a couple of
4 notes in there, Mr. Caramadre asks about process to
5 vacate plea. Doesn't request that a motion to vacate
6 be filed. Only asks about the process.

7 What do you recall about that conversation with
8 Mr. Caramadre?

9 A. This would have been a meeting with Mr. Traini and
10 Mr. Caramadre and we wanted to get him in the office.
11 We met in my office in Warwick. And we needed to get
12 this process going, meaning the sentencing process
13 because, again, we had the restitution issues. We've
14 got to prepare for sentencing. And there was a lot to
15 do. And we wanted to get Mr. Caramadre's cooperation
16 because this isn't something we were going to be able
17 to do on our own. He needed to cooperate with us, and
18 we wanted to make sure that he was invested in the
19 sentencing because we didn't just want to show up in
20 February or March or April and say, Gee, he's a nice
21 guy. You know, give him a break. Only give him two
22 years. That's not what we planned to do. We had
23 planned to do a lot of work. So that's the reason for
24 this meeting.

25 And the only thing I recall about this, and I

1 took the note down so I thought it was important, he
2 did not ask us to file a motion to vacate. He started
3 asking questions about the process on a motion to
4 vacate, which concerned us. And to be perfectly frank,
5 I think Mr. Caramadre mentioned something to me
6 one-on-one maybe a week before this about a possible
7 motion to vacate.

8 Q. And did he say in that conversation, either the
9 week before or this December 14th meeting, what his
10 basis would be to vacate his plea?

11 A. I asked him that. In fact, I think there's
12 e-mails later on in December but I asked him that. I'm
13 trying to remember when he initially said that to me.
14 This was the day -- and I would have to look at a
15 calendar because there was an event at Holy Apostles.
16 This was a day where he made some -- I wasn't there,
17 but in our Men of St. Joseph's group he made some
18 reference to he wouldn't commit suicide because that
19 would be just an absolute sin but that it wouldn't be a
20 sin if he hired someone to kill him. He said that to
21 the group and I had stepped out of the room and
22 everyone came to me in concern.

23 So I know I'm getting a little far afield, but I
24 wound up finding him at a breakfast location, at a
25 breakfast place down the street because we were looking

1 for him for about an hour. I'm like, what's going on
2 here? He made that statement. It alarmed me. I
3 actually found him at a breakfast stop. I think it was
4 Adle's Muffin down the street. I brought him back. I
5 made him call I think it was Sarah Xavier, which is his
6 treating doctor. And then I was concerned. I asked
7 him to come to the Holy Apostles basketball game
8 because I coached the 9th and 10th graders there. And
9 I invited him and he came. It was him and his son. I
10 wanted to keep an eye on him, and I wanted to have a
11 conversation with him. He came to the game. He
12 watched it. Unfortunately, we lost. But after the
13 game, he mentioned something about maybe moving to
14 vacate his plea. And I asked him, What's the basis for
15 it? He said something to the effect of that, you know,
16 that he did this for Paula because she was really sick
17 and he can't live with himself because it's a lie and
18 that everyone's looking at him like he's a criminal.
19 And his own household is -- he didn't use this word,
20 but I'm just going to use it -- is a wreck, is upset
21 because his own family members, like the LaMontes, the
22 LaMontes who were going to testify against
23 Mr. Caramadre, now his other relatives were kind of
24 siding with them, were now talking to them and that he
25 killed them. And it was a strain on his family and he

1 just wanted to go back to trial.

2 He never told me, You know, you threw the case,
3 you were the worst attorney, Mr. Traini forced me to
4 plea. He didn't mention any of those things. That was
5 basically what he told me.

6 Q. So he never said he was completely hopeless
7 because of your lack of cross-examination of the
8 witnesses?

9 A. No.

10 Q. Turn your attention to Government Exhibit Number
11 24, which is Bates numbered 441 at the bottom.

12 THE COURT: Any objection to 24?

13 MR. OLEN: No, your Honor.

14 THE COURT: All right. 24 is full.

15 (Government Exhibit 24 admitted in full.)

16 Q. This is an e-mail, Mr. Lepizzera, dated December
17 27th, 2012, a couple of days after Christmas. And it's
18 an e-mail chain between, Mr. Traini and yourself and
19 Mr. DeMello cc'd. It looks like you are forwarding an
20 e-mail to Tony and it includes a copy of a case,
21 federal case from West Law, United States versus
22 DeSimone. Is that the Rocco DeSimone case?

23 A. It is.

24 Q. Is Rocco DeSimone a criminal defendant who came up
25 frequently during the course of your representation of

1 Mr. Caramadre?

2 A. Yes.

3 Q. He was a defendant who was prosecuted for fraud in
4 this Court in which myself and Mr. Vilker were
5 prosecutors.

6 A. Yes.

7 Q. And Judge Smith was the Judge?

8 A. Yes.

9 Q. And Mr. DeSimone had pled guilty prior to trial;
10 is that correct?

11 A. Yes.

12 Q. And then he had attempted to withdraw his guilty
13 plea?

14 A. Yes.

15 Q. Mr. Caramadre had followed those proceedings very
16 closely, didn't he?

17 A. He followed the proceedings after Judge Smith
18 vacated the plea and he went to trial. I don't have
19 any knowledge of Mr. Caramadre following the case while
20 the motion to withdraw the plea was involved.

21 Q. Because he actually physically came and attended
22 the trial while we were trying that case; is that
23 correct?

24 A. Oh, he did.

25 Q. And he did that against your advice?

1 A. I received a phone call from Mr. Vilker, and it
2 was like noontime, 12:30. And I said to Lee, Boy, you
3 can't be that busy. You're in the middle of trial and
4 you're calling me. I mean, what's going on?

5 And he mentioned to me that Mr. Caramadre and
6 maybe Mr. Radhakrishnan were attending the trial, and
7 he was -- I think Mr. Vilker was kind of upset, and I
8 think I might have initially said, Well, you know,
9 courtrooms are -- they're open to the public just like
10 they are today, and he's got a right to be there
11 although I don't want him to be there. And I said, I
12 am going to -- that's what I said to Mr. Vilker.
13 Inside, myself, I was kind of alarmed.

14 I actually left my office and came down here
15 because I didn't want my client here. I didn't want
16 him -- he had a right to be here, and I don't think he
17 did anything wrong whatsoever. He wanted to be here, I
18 think, because I don't think he's ever tried a case.
19 The two of you were prosecuting him. I think he wanted
20 to see where people sit, how good you and Mr. Vilker
21 were trying a case, how Judge Smith handles himself as
22 a trial judge. So but be that as it may, I came down
23 here and basically asked the client to leave, because I
24 just didn't think it was appropriate and I didn't want
25 the Court to think anything wrong of Mr. Caramadre

1 being there. It was kind of strange, and I didn't want
2 any opportunity where any FBI agents or anyone says,
3 Well, Mr. Caramadre -- someone looked at me the wrong
4 way or what have you. I just wanted him out of the
5 courtroom.

6 Q. He came as a scouting mission, is that your view
7 of it?

8 A. That's my view of it. He never said that, but
9 that's my view of it.

10 Q. Now, did there come a point in time later after
11 his own trial took place and after he had pled guilty
12 where you came to believe that he had followed the
13 Judge's decision in allowing Mr. DeSimone to withdraw
14 his guilty plea, perhaps after the fact but very
15 closely.

16 A. I think this e-mail you're referring to -- what
17 date is this, please?

18 Q. This is December 27th, 2012.

19 A. I believe I had a meeting with Mr. Caramadre that
20 night and actually it's 12:49 a.m. Thursday. So I
21 would have had a meeting with him Wednesday night. And
22 I don't know if he mentioned specifically DeSimone,
23 about vacating a plea or not. But he kept on saying, I
24 lied, I lied, I lied to the Court. I think I need to
25 vacate my plea. Okay?

1 And then what rang in my mind was, wait a
2 minute, he sat in for the DeSimone trial. Not the
3 motion to vacate, but he sat along at the DeSimone
4 trial. I think we had conversations about DeSimone
5 prior, not this point. And he's saying he's lying. Is
6 he trying to pigeon hole any motion to vacate now into
7 a DeSimone situation? And to be perfectly frank with
8 you, I don't believe I ever read the DeSimone opinion.
9 I did follow along a little bit in the newspaper,
10 because I think it was reported in the Journal, but I
11 never read the actual decision, what the Judge's basis
12 was for vacating the plea.

13 So I think I left Mr. Caramadre. I think I went
14 back home down the street. I think I read DeSimone,
15 and it started clicking in my mind is this what
16 Mr. Caramadre is doing? He's trying to pigeon hole
17 himself into a DeSimone situation, which then prompted
18 this e-mail to Tony -- Mr. Traini and Mr. DeMello.

19 Q. You forwarded to them a copy of the decision?

20 A. Yes.

21 Q. I'm just going to focus a little bit. In your
22 statements, you write, You only advise clients. Can't
23 make the actual decisions for them. This case is no
24 different. I wish him the best of luck, although in my
25 opinion he is on a suicide mission. This was his

1 decision to plea, and he exercised that decision by
2 accepting a plea. We didn't make that decision for
3 him.

4 Then you talk about him conferring with outside
5 counsel. And I want to go down a little bit. You
6 write, He thinks the most the Judge will give him is
7 five years if he loses the motion and is sentenced.

8 Is that based on a statement that he made to
9 you?

10 A. Yes.

11 Q. Then you write, He is over-playing his hand, but
12 that's Joe. Also, I think new counsel is really doing
13 a disservice to him because they're only entering for
14 purposes of vacating the plea. And I'll skip down and
15 you write, He has every right like any other
16 disgruntled defendant to try to unravel the plea, but
17 he'll be the new poster child for the old adage, "Be
18 careful of what you wish for."

19 And then you write, No matter what the Court
20 does with the motion, Joe is facing an uphill battle.
21 And here you write, Also, I am starting to think we
22 along with the Government and the Court were played
23 with respect to this plea. It sounds like he
24 manufactured the entire scenario to pull out his
25 mulligan. He didn't like the way the evidence was

1 coming in or that RR, Raymour Radhakrishnan, was being
2 tried with him. He wants a do-over and he thinks this
3 time RR will not be tried with him because Raymour
4 Radhakrishnan wants this over and his guilty plea will
5 remain intact. I think that he thinks that even if he
6 loses the motion he is better off because everyone will
7 know, (or so he believes) that he is not guilty and he
8 was forced to take a plea because of his wife's
9 decision or whatever reason he will proffer.

10 Is that an accurate statement of your opinion as
11 to what you think was going on at the time?

12 A. It is.

13 Q. Is it still your opinion?

14 A. I don't think it's appropriate -- obviously, the
15 Court can rule -- I'm a fact witness here. I don't
16 have a stake in this proceeding. The Court should
17 decide the motion. Part of me says, Yeah, that's
18 exactly what's going on. I do think it's a suicide
19 mission. I could be wrong.

20 Q. Okay. I'll withdraw the question.

21 All right. You did communicate with
22 Mr. Caramadre after he indicated to you that he was
23 going to get a new attorney and move to withdraw the
24 plea; is that correct?

25 A. I'm sorry?

1 Q. You did continue to have some communication with
2 Mr. Caramadre after he initially indicated to you that
3 he wanted to withdraw the plea and he was going to get
4 a new attorney?

5 A. By the way, the independent counsel issue came
6 from me.

7 Q. Explain what you mean by that.

8 A. While we're having these discussions,
9 Mr. Caramadre is telling me, basically, why don't I
10 file the motion to vacate the plea. I had written to
11 him and I discussed with him what's the basis for the
12 plea. Just like you need a basis for -- I'm sorry.
13 What's the basis for the withdrawal of a plea. Just
14 like you need a basis for a plea to enter, you need a
15 factual basis for the withdrawal. And I don't see it.

16 And on top of it, I was a hundred percent honest
17 with him. I said, On top of it, as I see it, the only
18 thing I can think of is you're going to have to attack
19 Mr. Traini and I. I don't see what your basis is for
20 attacking us, but for me to give full disclosure,
21 you're going to have to attack us for whatever reason
22 that you can come up with. So therefore, I cannot
23 ethically give you an opinion as to how to vacate a
24 plea, what the process is, what the law is because I
25 have a conflict. You're going to have to attack me

1 unless you can come up with some other grounds, which
2 is fine.

3 So I'm the one that referred him to independent
4 counsel, but initially he wanted me to do it. And on
5 top of it, he wanted me, because this doesn't jive to
6 what all the evidence that is coming in, this is a
7 train wreck, the trial, he wanted me to be the trial
8 counsel on a new trial that -- if the Judge awarded him
9 a new trial. He didn't want Mr. Traini. He wanted me
10 to do it. He said, You're capable. You can do this.
11 I want you to be my trial counsel.

12 Because one of the concerns I had was if you go
13 hire a lawyer, are they just coming in to vacate your
14 plea because we're going to have to withdraw and I
15 don't know how that's going to work with the Court, if
16 the Court is going to allow a special appearance on an
17 attorney coming in to vacate a plea. But if these
18 lawyers that are coming in to represent him aren't
19 fully invested in trying the case if Mr. Caramadre is
20 successful, again that's for the Court to decide not
21 for me, then who is going to be trial counsel? He
22 wanted me to be trial counsel.

23 Q. He wanted to have you file a motion to withdraw
24 the plea; and then if it was successful and there was a
25 new trial, he wanted you to be the attorney again?

1 A. Yes. And on top of it, he wanted me as late as in
2 January of 2013, he wanted me to enter in the civil
3 cases for him because he said you have the most
4 knowledge of the facts. His present attorneys,
5 Mr. Flanders, his firm was still counsel of record. He
6 said, I trust you implicitly. You know the facts
7 better than anyone else. You're as good as, if not
8 better, than all the attorneys I've hired. You're my
9 guy, so to speak. You're my counsel. I want you to
10 enter in the civil cases.

11 And I told him, I said, I can't do that for a
12 couple of reasons. One is my reputation. You're going
13 to file some motion to vacate, which I don't know what
14 the basis is because he's never disclosed to me. I'm
15 going to enter on the civil cases and my reputation is
16 going to be tarnished because I'm entering the civil
17 cases as your attorney and then in criminal proceeding
18 you're potentially attacking me? I'm going to look
19 bad.

20 Number two, more importantly, forget about me.
21 Let's talk about the client. The client is going to
22 look terrible with the Court. You're going to be
23 attacking me in a motion to vacate a plea in a criminal
24 case, and then you're saying I'm a great competent
25 attorney to handle the civil case? I couldn't do it.

1 So I never entered in the civil case because I didn't
2 think it was wise for me or him.

3 Q. I'd like to show you Government Exhibit 25, which
4 is Bates marked 459.

5 MR. OLEN: No objection.

6 THE COURT: 25 is full.

7 (Government Exhibit 25 admitted in full.)

8 Q. Two page e-mail 459, 460. I want to focus on this
9 is an e-mail from yourself to Mr. Caramadre, and it's
10 dated January 20th, 2013; and you reference being at
11 the end of the first line, I have not spoken to Brooks.
12 Who's Brooks?

13 A. That would be Brooks Magratten. He is the
14 plaintiff's counsel in the AEGON, Western Reserve
15 cases.

16 Q. So he's one of the attorneys for the opposing
17 party in the civil case?

18 A. He represents the insurance companies that have
19 sued Mr. Caramadre and a host of other defendants.

20 Q. And then you write, I think it is best that Bob
21 and Adam remain as your counsel at this point, at least
22 for the mediation.

23 That refers to Mr. Flanders and one of his
24 associates?

25 A. Yes. Adam Ramos. He works with Mr. Flanders at

1 Hinckley Allen.

2 Q. And then you write, Putting aside my credibility,
3 which I would never jeopardize, any participation by me
4 in the civil cases on your behalf would only cause the
5 Court to further question your credibility, possibly
6 jeopardize your position in both the civil and the
7 criminal cases. For a variety of reasons, I also
8 cannot use the fact that you're about to file a motion
9 to withdraw your plea in the criminal case to promote
10 your interest in the civil case.

11 Then you write, I don't believe what you are
12 doing is factually or legally grounded, nor do I
13 believe that your current strategy is prudent or in
14 your best interest. To put it crudely, you are about
15 to embark on a suicide mission which will not end well
16 for you at all. I have stood by you as your lawyer and
17 friend for the last couple of years not for money,
18 prestige, status, or advancement of my legal career.
19 To the contrary, I stood by you as a lawyer because
20 that was my job and my duty as an officer of the Court.
21 I remain firmly planted as your friend because I have
22 considered us friends independent of our
23 attorney-client relationship.

24 Did that accurately reflect your feelings at the
25 time you wrote that e-mail?

1 A. Yes.

2 Q. Mr. Lepizzera, did you continue to try to take
3 steps to prepare for Mr. Caramadre's sentencing
4 proceedings up until the point in time which Mr. Olen
5 and Mr. Watt entered their appearance on his behalf?

6 A. Yes.

7 Q. Why did you do that?

8 A. I had discussions with Mr. Caramadre about how was
9 he making out in terms of seeking independent advice,
10 and no lawyer was contacting me because my advice to
11 Mr. Caramadre was seek independent counsel so you can
12 tell your version of facts so they can give you an
13 unblemished opinion, but you should have -- any lawyer
14 that's going to -- that's worth anything that is going
15 to represent you in a motion to vacate, they should sit
16 down and discuss it with me. I'll protect the
17 privilege. They should at least get my version as your
18 trial counsel as to what happened, and then you can
19 make a decision with your new lawyer.

20 And he wouldn't identify who the lawyer was. I
21 think he was interviewing multiple lawyers. I don't
22 know who they all are. He wouldn't identify that. I'm
23 asking him, Can you at least identify the lawyer for
24 me? And it's up to you. If you don't want me to speak
25 with the new lawyer, that's fine; but I think that's

1 unwise for you and the new lawyer, and I would question
2 any lawyer who would file a motion to vacate without at
3 least talking to counsel. Now, whether they believe me
4 or not, that's okay. But at least do your due
5 diligence.

6 No one contacted me. And I was concerned that
7 -- we met with Kristen Mattias on, I think, November
8 30th, and she's preparing the draft presentence report.
9 So that's going to be coming out shortly. Mr. Traini
10 and I aren't doing anything, and we had an ethical
11 dilemma because I know that we made representations to
12 the Court about this February 2012 sentencing date
13 being a placeholder date, and I was going to file a
14 motion to continue the sentencing. The problem that I
15 had was if I filed the motion to continue, I was
16 concerned about being disingenuous with the Court.
17 Because if I'm filing a motion to continue because I'm
18 saying, Look, we're preparing for sentencing, we're
19 interviewing witnesses, whatever we're doing, we're
20 preparing memos, then there's a basis for it.

21 And Judge Smith was, I believe, and the
22 Government was expecting that to happen, but that
23 wasn't happening.

24 So Mr. Caramadre and I had a discussion about
25 whether we'd file a motion to continue, and I refused

1 to because I didn't want to indirectly mislead the
2 Court. So I'm standing still. Nothing is getting
3 done. The presentence report is about to come out, and
4 it did come out. Never mind no counsel's entered, but
5 no counsel's contacted me or even been identified
6 because Mr. Caramadre won't identify who the new lawyer
7 is. And I'm getting concerned.

8 So I did some work on restitution issues. At
9 least stuff that I could do. I also met with Sarah
10 Xavier. I went to her office, and I reviewed some
11 records.

12 **Q.** What was the purpose of that visit?

13 **A.** To look at the file. Okay? Two reasons. One is
14 to look at the file because I wasn't convinced even
15 though I did write December 27th Joe said it's not if
16 but when, there was no action. There was no motion
17 coming. Okay? And I was still his attorney of record,
18 and so I went there to view his medical records. I
19 spoke to Sarah Xavier. Okay? And while doing that as
20 an attorney, I had concerns for my friend because of
21 these statements he made about suicide and hiring
22 someone to kill himself. I was genuinely concerned for
23 my client and my friend. I'm saying to myself, did I
24 miss anything, is he going to commit suicide, is he
25 going to do something stupid. But it was in

1 conjunction in my capacity of, you know, viewing the
2 file, talking to Sarah Xavier for those reasons.

3 I know I worked on restitution issues, and then
4 I wrote to Joe about I had formulated a strategy with
5 Mr. Traini on restitution issues that I thought could
6 have been maybe persuasive with the Court, we'll never
7 know now, in terms of I wanted to write letters to all
8 the investors.

9 Mr. Caramadre is actually caught holding the bag
10 here because he's not the only investor. There are a
11 lot of people that invested in these annuities and
12 these bonds and they made a lot of money. But again,
13 Mr. Caramadre is the one that's going to wind up with a
14 big restitution award.

15 So one of the things that I had thought of was
16 to write to or contact investors that made money. And
17 I was looking to see if we could put a pool of money
18 together, not for counsel fees but to put a pool of
19 money together not for the insurance company and not
20 for the bond-issuing companies because I still disagree
21 with you that they lost any money, but for the
22 terminally ill people and the family members because
23 that was the human factor of this case. Those were
24 humans. The insurance companies and the bond-issuers,
25 they're big corporations. Okay? And part of our

1 argument was they knew what they were getting into, at
2 least in part. But there were these humans out there
3 that they came to testify; they felt like they got
4 trampled on, and they think that Mr. Caramadre made all
5 this money. What I was looking to do as part of our
6 sentencing argument was can we go to the investor and
7 say, Look, you're not getting sued by the insurance
8 companies at this point for ill-gotten gains. Because
9 the insurance companies, if I was representing the
10 insurance companies, I'd be going after the investors
11 that benefitted from this so-called scheme. And I
12 wanted to see if I could raise a pool of money and then
13 part of the funds would be contingent upon those funds
14 going to the humans, the terminally ill people and
15 their family members. Maybe raise 10, 15, \$20,000 for
16 those people to give back to them, you know. So that
17 was another thing we were working on.

18 Q. That was an idea you had for sentencing?

19 A. Yes. Now, whether that would have worked and
20 there were some logistics about how we contact the
21 investors and what do we say to them, but I discussed
22 it with Mr. Caramadre, and I think it's on one of the
23 exhibits that you already introduced, Mr. Caramadre was
24 flat out against it, flat out against it.

25 Q. You're referring to Exhibit Number 23 where it

1 says, "Restitution theories, insurance companies versus
2 measure lives," then you write with an arrow "He is not
3 in favor of our theory"?

4 A. That's it.

5 Q. What was Mr. Caramadre's reasons for being opposed
6 to that idea that you had?

7 A. Mr. Caramadre is a very prideful man and part of
8 this whole thing about raising funds and this know how
9 that he developed how to make a lot of money with
10 annuities that were fool-proof was making connections
11 to rich people and so-called important people. And I
12 think he found it offensive that Mr. Caramadre doesn't
13 need any money help from anyone. And you cannot
14 contact these people because he didn't want to ask for
15 help and, you know, he told these people that it was
16 fool-proof, and he just didn't want to ask them for
17 money because it was his responsibility.

18 Q. Now, we were talking a little bit about the
19 presentencing work that you would be required to do.

20 Did Mr. Caramadre ask you to communicate to the
21 Court that he was going to file a motion to withdraw
22 his guilty plea? Did you have concerns about that?

23 A. He -- and I don't know when during December or
24 January, because I kept saying to him we're stuck in
25 the mud. This presentence report is going to come out.

1 I know that when I was on the court-appointed list I
2 handled just a number of cases, that you have 14 days
3 now. There would have been, I think, not to be
4 presumptuous but there would have been an extension
5 granted because this wasn't a typical case, but we're
6 not doing anything so -- could you ---

7 Q. Did you have concerns about alerting the Court to
8 the notion of filing a motion to withdraw
9 Mr. Caramadre's guilty plea at the same time the
10 sentencing was proceeding when you didn't have clarity
11 on that issue?

12 A. This was another ethical dilemma that Mr. Traini
13 and I were considering. I didn't know if Mr. Caramadre
14 was, in fact, going to file a motion to vacate. In
15 fact, I think his counsel entered on the 10th or 11th
16 of January. They didn't file a motion to vacate. They
17 just filed an entry. I didn't know that he was going
18 to file a motion to vacate, and I didn't want to be the
19 one to draw that first crack in the dam. Because once
20 there's any whiff that he's thinking about a motion to
21 vacate, his sentencing prospects are damaged. So if I
22 alert the Court -- because there was an issue he wanted
23 me to tell Probation, he wanted me to tell the
24 Government, he wanted me to let the Court know. And I
25 wouldn't do it because I didn't want to harm the

1 client. I thought that was harmful, because if I say
2 it, once that bell is rung there's no unringing it.
3 And once anyone finds out or the Court finds out, then
4 he decides not to do it, there's a question of
5 acceptance of responsibility. If the Government finds
6 out, it's going to affect your recommendation.

7 So I didn't want to be the one to do it. My
8 attitude was you want to file a motion to vacate and
9 let people know, you do it. And I'm recommending that
10 you don't do it, but go get other counsel and if they
11 do it, they do it.

12 Q. Do you have the authority to stop the sentencing
13 train from moving, so to speak, in the meantime?

14 A. Absolutely, no, I don't, unless I file a motion
15 and it has to be approved by the Court. And I've also
16 explained the ethical dilemma in filing a motion to
17 continue.

18 Q. Now, I want to turn your attention to a different
19 topic, which is the fee arrangement that Mr. Caramadre
20 had with Mr. Traini. Do you recall that fee
21 arrangement? I know we're out of place here, but I
22 just want to kind of return to how that first came
23 about.

24 A. Yes.

25 Q. Okay. Mr. McCormick had represented as co-counsel

1 Mr. Caramadre with you, and Mr. Caramadre decided that
2 he didn't want Mr. McCormick on the team anymore; is
3 that right?

4 A. That's correct.

5 Q. And you still felt that you needed at least one
6 other attorney on the case?

7 A. At least one.

8 Q. Okay. And there came a point where the two of you
9 decided that Mr. Traini would be a good option. How
10 did that come about?

11 A. I wound up discussing it with Joe, Mr. Caramadre.
12 And I believe I was the one that initiated that, and I
13 had a conversation with Mr. Caramadre about it.

14 Q. Okay. And did you -- ultimately, Mr. Traini and
15 Mr. Caramadre did enter into a retainer agreement; is
16 that correct?

17 A. The actual written agreement is actually between
18 me and Mr. Traini.

19 Q. Okay.

20 A. But Mr. Traini and Mr. Caramadre met alone. And
21 Mr. Traini initially wanted \$500,000, a minimum
22 non-refundable fee from Mr. Caramadre.

23 Q. Okay.

24 A. And there came to some discussion, and I was
25 involved in these discussions about that would be a

1 stretch for Mr. Caramadre and that something to the
2 effect of he could come up with the 500,000 but if he
3 came up with it he's going to have to pay a \$100,000
4 penalty, whether it was IRAs or some kind of retirement
5 vehicle. One of the things he asked Mr. Traini was if
6 Mr. Traini would split it with him.

7 So in other words, I'm going to take \$100,000
8 hit if I liquidate some retirement accounts -- or
9 whatever he was going to liquidate. Would you be
10 willing to take \$450,000 instead of the half million
11 dollars so you could, so-called, split, you know, split
12 my penalty, which ultimately was agreed upon.

13 Q. Was it your understanding that this was a retainer
14 that would be drawn on and any surplus would be
15 returned or that it was a non-refundable fee?

16 A. It was a non-refundable fee.

17 Q. And where do you get that information from?

18 A. From discussions with Mr. Caramadre, from
19 discussions with Mr. Traini. The one thing that
20 Mr. Caramadre, one issue he had was we're hiring
21 Mr. Traini for trial, trial prep and, obviously,
22 working with you on the trial. I want to make sure
23 Mr. Traini is going to be standing with you on day one
24 so my concern is if I give Mr. Traini \$450,000, and
25 there was no doubt it was a non-refundable fee, if I

1 give him the \$450,000 on whatever, June 20th, what
2 happens if he's not there and if a bus hits him? My
3 money is gone.

4 So Mr. Caramadre asked me to work out something
5 in writing where although it was a non-refundable fee
6 that that fee would be parked, \$450,000 would deposited
7 and parked in my client account, which it was from day
8 one, and that I would pay Mr. Traini over time.

9 Q. Was there any doubt in your mind that
10 Mr. Caramadre understood that fee to be a
11 non-refundable fee?

12 A. There's no doubt in my mind. In fact, I
13 negotiated with Mr. Traini a payment of \$50,000 per
14 month over nine months, which is the \$450,000. And I
15 relayed that back to Mr. Caramadre and said, Look, this
16 is what I negotiated. Mr. Caramadre said something to
17 the effect of, You know, Mike, you're always, you know,
18 you always got my best interest at heart. You're
19 always protecting me, but you really didn't have to do
20 a nine-month of payment. Because that's too much. He
21 goes, Do whatever you want, but you can give Mr. Traini
22 for all I care -- he goes, As far as I'm concerned,
23 you can give Mr. Traini all the money as long as --
24 like, by day one of trial.

25 Q. Okay. Now, did you give Mr. Caramadre a copy of

1 that written retainer agreement that you executed with
2 Mr. Traini?

3 A. I thought I did. Mr. Caramadre says I didn't, and
4 I just don't recall if I did or I didn't. So I'm
5 unclear if I did or I didn't.

6 Q. But you thought you did?

7 A. I thought I did. Then Mr. Caramadre at some point
8 asked for the retainer agreement. And he told me that
9 -- he said, I never got a copy of this. And I
10 forwarded it to him in December.

11 Q. I'd like show you what I'll mark as Government
12 Exhibit Number 26, marked 414 at the bottom.

13 THE COURT: Is this 26?

14 MR. McADAMS: 26, your Honor.

15 THE COURT: Any objection?

16 MR. OLEN: I just want to look at it, please,
17 your Honor.

18 MR. McADAMS: It's a three-page e-mail, 414.

19 MR. OLEN: No objection.

20 THE COURT: 26 is full.

21 (Government Exhibit 26 admitted in full.)

22 Q. This references December 20th, 2012,
23 Mr. Caramadre, which is approximately a month after the
24 guilty plea. Mr. Caramadre writes to you that he needs
25 a copy of the checks paid to Tony and he writes that, I

1 know you described the payment schedule; however, I
2 require the actual checks paid to him. I can't move
3 forward until I resolve the issue with Tony.

4 Do you recall that e-mail?

5 A. Yes.

6 Q. Go to the second page. Is this a summary of the
7 fee arrangement that you just described regarding the
8 \$50,000 per month?

9 A. Yes.

10 Q. And just focusing on the bottom paragraph, the
11 bottom, it says page four, it's from an e-mail: The
12 fact that he agreed to accept distributions of \$50,000
13 per month leading up to and over the course of the
14 trial does not convert this into anything else and,
15 therefore, this arrangement is and always was a flat
16 fee agreement. This arrangement you struck with him
17 for \$450,000 was solidified back in June of 2012.

18 That's your understanding of what that agreement
19 was?

20 A. Yes.

21 Q. And you provided -- at that time, you then
22 provided Mr. Caramadre with a copy of the fee
23 agreement, whether it was a duplicate or whether it was
24 the first time he saw it?

25 A. I did.

1 Q. Now, if we could show you Government Exhibit
2 Number 27.

3 MR. OLEN: No objection.

4 THE COURT: 27 is full.

5 (Government Exhibit 27 admitted in full.)

6 Q. This is an e-mail from Mr. Caramadre to yourself
7 and Mr. Traini, and it's dated January 2nd, 2013. It
8 says -- it talks about the guilty plea, but I want to
9 go to the fourth bullet point. It says, I plan on
10 contesting \$150,000 of payments made to Tony on the
11 retainer agreement.

12 Having looked at the agreement, it states that,
13 A dispute reverts to Tony's rate of \$400 per hour. It
14 is my estimate that Tony did not perform 1125 hours on
15 my case, which would have consumed the entire \$450,000
16 retainer amount. If this refund of \$150,000 is
17 challenged, then obviously I will request billing hours
18 spent on my case as well as billing hours Tony spent on
19 other cases from June so we can settle on a figure.
20 This is strictly business and I harbor no ill will
21 toward Tony.

22 That's from Mr. Caramadre.

23 A. It is.

24 Q. Does it appear he's found a loophole in this
25 retainer agreement, fair to say?

1 A. I don't know what he did because I was shocked
2 that he was disputing it because everyone knew that
3 this was a flat fee agreement. And he's obviously --
4 when I negotiated the retainer agreement that was
5 between Tony and I, there were some provisions in it
6 that talked about \$400 an hour, but it had nothing to
7 do with any kind of -- it was if I had terminated Tony
8 because the agreement is between Tony and I. I didn't
9 terminate Tony. And in fact, there's another provision
10 in the retainer agreement that says the whole balance
11 is due upon a plea. So whatever he thinks there is in
12 terms of a loophole or not a loophole, he's making an
13 issue with the agreement.

14 Q. And nothing in this e-mail indicates that he's
15 actually unsatisfied with the work that you or
16 Mr. Traini have done, correct? In other words, he
17 doesn't say anything in here about you falling down on
18 the case, deliberately not cross-examining witnesses,
19 your mistake by not giving an opening statement, any of
20 those things?

21 A. No.

22 Q. Doesn't say you told him to lie, you ruined his
23 life, you made him plead guilty?

24 A. No. That's why I was asking him -- I gave him an
25 opportunity to do that. I asked him at some long

1 e-mail I sent to him, What's the factual basis for your
2 motion to vacate? What is it? And he never said those
3 things.

4 Q. In fact he writes, This is strictly business, from
5 his perspective.

6 A. He did. And my memory is as of January 15th, when
7 we had a status conference with this Court, that
8 Mr. Olen couldn't even identify what the factual basis
9 was for the plea because he was asked and he said,
10 Well, you know, the client professes his innocence and
11 his wife was sick. And that's all I know at this time.
12 I'm trying to get my arms wrapped around it.

13 So as of January 15th, his new counsel is not
14 even saying, you know, Mr. Lepizzera did a terrible job
15 on cross-examination. Mr. Traini coerced Mr. Caramadre
16 to plea. That was never said.

17 Q. During the entire time that you worked with
18 Mr. Traini on this case, did he ever advocate to you
19 that the two of you ought to recommend Mr. Caramadre
20 plead guilty so that he could get a windfall from this
21 fee arrangement?

22 A. Let me make one thing clear. This was not about
23 the money. If you look at the retainer agreement
24 between Mr. Traini and I, it called for \$50,000 per
25 month. I did not give Mr. Traini the first \$50,000 I

1 think until June 24th, which was the date that -- or
2 June 23rd. It was late June that I executed the Traini
3 agreement. I gave him the second July check in late
4 July. I gave him the August check I think in late
5 August. That's my memory. I have to look at the
6 checks. I didn't pay Mr. Traini September because
7 according to the fee agreement between him and I, the
8 payment was due on the first of the month. I didn't
9 pay him September 1. I didn't pay him October 1, and I
10 didn't pay him November 1. And it's not because the
11 money wasn't parked in my clients account, because it
12 always was. Because Mr. Traini and I were not focused
13 on money. We were focusing on getting this case ready
14 for trial and giving the client the best defense
15 possible in a very difficult case.

16 So at the start of trial even though
17 Mr. Caramadre told me, Mike, you didn't have to go that
18 far with him, you can give him all the money by day one
19 at trial, I not only didn't do that, but I didn't even
20 give him \$150,000 in payments that the retainer
21 agreement called for and Mr. Traini didn't ask for them
22 because we weren't focused about money. Because
23 Mr. Traini was okay with the fact that it was
24 non-refundable. It was everyone's understanding it was
25 non-refundable and the money was in my clients account

1 so it's there.

2 MR. McADAMS: Could I briefly, your Honor, have
3 a moment.

4 No further questions.

5 THE COURT: Thank you.

6 Given the hour, I think what I would like to do
7 is stop the hearing at this point. I'm going to meet
8 with counsel up in my chambers in a few minutes. Take
9 a break, and then you can all come up to chambers.

10 My intention is to reconvene this hearing
11 tomorrow morning and to proceed with the understanding
12 that there may be a need to continue the examination of
13 Mr. Lepizzera if we reach a point where the cross can't
14 go any further because of the additional documents that
15 remain to be reviewed in camera. And I have those
16 documents, which I'll begin reviewing tonight. But
17 given the pace that things are proceeding at, I want to
18 keep this moving. Tomorrow's available so we're going
19 to continue it tomorrow. Next Monday is also
20 available. So you should mark your calendars and keep
21 next Monday clear as well, just in case. All right?
22 So that's what's going to happen, and I'll see you all
23 upstairs in about ten minutes.

24 (Court concluded at 4:25 p.m.)
25

C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, do hereby certify
that the foregoing pages are a true and accurate
transcription of my stenographic notes in the
above-entitled case.

/s/ Anne M. Clayton

Anne M. Clayton, RPR

June 4, 2013

Date